UNIVERSITY OF PENNSYLVANIA

THE UNITED STATES RAILROAD LABOR BOARD AND RAILWAY LABOR DISPUTES

FRANK BIRD WARD

A THESIS

IN ECONOMICS

PRESENTED TO THE FACULTY OF THE GRADUATE SCHOOL IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

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CONTENTS

Chapter I. The Establishment and Organization of the United States Railroad Labor Board 5

Chapter II. Principles Underlying the Decisions of the Board 18

Chapter III. Powers of the Labor Board as Defined by the Courts 71

Chapter IV. New Legislation 83

Bibliography 93

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CHAPTER I.

The Establishment and Organization of the United States Railroad Labor Board

BACKGROUND OF THE TRANSPORTATION ACT, 1920.

Although the return of the railroads to private operation intensified the feeling that Congress should legislate concerning railway labor disputes, that feeling had existed prior to the entrance of the United States into the World War.....The apparent breakdown of earlier legislation on repeated occasions led President Wilson in 1916 to express his favor of a law which would require uninterrupted service while disputes were being investigated. [1]

Labor, in this country, had never been enthusiastic at the prospect of governmental intervention in railway labor disputes and its attitude became one of definitely expressed opposition as its bargaining power increased.....In 1917 attempts were made to amend the Newlands Act to permit the Interstate Commerce Commission to fix railroad wages and hours. Such efforts were opposed by labor as being maneuvers made with the intent to enslave the worker. Labor thought that Congress should keep "hands off" the railroad labor problem; but that if Congress must meddle it should abolish the Newlands law and establish instead a bipartizan board of eight railroad men and officers no longer in service.[2]

Various measures were proposed; but Congress was busy with war matters and, besides, there was the United States Railroad Administration—this was its problem. A

1. Address of Pres. Wilson, December 5, 1916. Cong. Record, Vol. LIV, pp 16-17.

2. Senate Committee on Interstate Commerce. Hearings 1917, 64th Cong. 2nd session. pp 186, 209, 239-285; Hearings on H. R. 19730 (1917), pp 54, 55, 169, 205.

law was passed, however, making it a misdemeanor to obstruct railway movement of interstate commerce during the war.[3]

When the return of the railroads to private control loomed imminent Congress felt impelled to do something and numerous proposals were submitted for its consideration. The famous Plumb Plan was one of these. The essential labor features of the Plan were these: The roads were to be managed by a board of directors composed of representatives of the employers and employees and wages were to be fixed by this board. Any disputes were to be settled by a bipartizan committee from whose decision appeal could be made to the bipartizan board of directors.[4]

More serious consideration was accorded House bill 10453 which suggested the establishment of two boards: a railway adjustment board and a railway labor board of appeals. The adjustment board was to be bipartizan, thirty members representing the employers and thirty members representing the employee organizations and receiving their compensation from those whom they represented. The law, suggested, provided that if either side failed to name its representatives this duty would devolve upon the President of the United States, who would then make the necessary appointments. Matters of dispute were to be referred by this board to a bipartizan conference committee whose findings were to be reported to the Railway Board of Labor Appeals, to the directly interested parties, and to the President of the United States. It was hoped that this report would result in definite action due to the full publicity which would be back of it. The Railway Labor Board of Appeals was to consist of nine members—the employers, the employees, the public, each being represented by three. The public members were to be chosen by the President with due regard to the interests of commerce, agriculture, and organized labor. The partizan groups, through the partizan

3. Public Law, No. 39, 65th Cong.
4. H. R. 8157, 66th Cong.

members of the adjustment board, were each to present lists of six names to the President, from which he was to select three names of members to represent the employees and three to represent the employers. The members were to serve six years and, with the exception of the public group, each was to have a vote. This board was to investigate the general problem of employer-employee relations, and have access to all relevant records of the old Board of Mediation and Conciliation. Decisions were to be enforced by full publicity. In addition, when the disputants should agree to submit any controversy to the Board of Adjustment the award or decision would be in the nature of a contract, and violators would be liable for damages.[5]

In the Senate a bill was presented by Senator Cummins.[6] This bill was opposed by labor because it made strikes unlawful, and by Senator La Follette as being anti-labor in spirit and intent. It provided for a Board of Wages and Working Conditions and three Regional Boards of Adjustment, all of which were to be bipartizan, the members thereof being nominated by their respective interests. Disputes not settled in conference, other than those involving wages and working conditions, were to be referred to the bipartizan adjustment board. Disputes involving wages and working conditions were to be submitted to the Board of Wages and Working Conditions which had final say, not only in these, but in all labor disputes. The Bill introduced by Senator Cummins was patterned largely on the wartime machinery for labor dispute adjustment.

Judge Chambers, Commissioner of Mediation and Conciliation, in his report to the President, December 1, 1919, recommended:[7]

1. That every effort be made to adjust the controversies which arose, by mediation and conciliation as under the Newlands Law.

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5. House Report, No. 456, 66th Cong. 1st session.
6. S. Report No. 304, 66th Cong.] 1st session. For La Follette's statement see Part II, p 10 of Report No. 304.
7. U. S. Commissioner of Mediation and Conciliation. Report. 1913-1919, pp 15-17.

When such efforts failed the President was to be notified and, in accordance with authority granted him by the law was to:

2. Appoint, if he thought it wise, a given number of arbitrators from a list of ten submitted by the disputants, and appoint a number of neutral members to represent the public.

3. The award of this arbitration board was to be effective at once if accepted by the disputants. In the event either side disagreed with the award, the decision was to be in effect for three months anyway.

4. During those three months the application of the award was to be studied by a commission appointed by the arbitration board from names suggested by the interested parties. This commission was to be empowered to call the board together at any time for interpretation of mooted points of the award. At, or before, the expiration of three months this commission was to make its final report to the board, whose revised or approved award was to be binding. However, either side could still reject the award by written notice to the board stating the reasons for such action. The award would then be binding for thirty days following receipt of this communication. By that time, it was to be hoped, public opinion would be functioning.

These recommendations of the Commissioner were intended to point the way to a means of labor dispute adjustment which would practically do away with strikes and lockouts while a dispute was pending. Moreover, all awards were to be effective, if only for thirty days. This plan would have given all decisions significance while reserving to the interested parties the privilege of challenging the terms of the award within a reasonable time.

In summary it may be said that there appeared to be a need for further railroad labor legislation; due partly to changed conditions which made the old Newlands Act inadequate (or, at best ineffective), and due in part to the problem of adjustment created by the return from wartime railroading to peacetime control and operation. At one extreme was the Plumb Plan which, if accepted, would have given to labor a previously unheard of amount of control. At the other extreme was such legislation as proposed by Senator

Cummins, calculated to abolish strikes by making them illegal. Both being extreme positions, they did not receive favorable consideration.

The House bill contained the idea of a Railway Labor Board of Appeals which should represent not only the disputants but the public as well. The Senate bill was more closely modeled in the manner of the wartime arrangements and was simply bipartizan, the public being left off the board which dealt with wages and working conditions. The Commissioner of Mediation and Conciliation recommended that the provisions for mediation provided in the Newlands Act be continued and that there be additional legislation to provide arbitration when necessary and to secure uninterrupted service while disputes were pending or an award was being studied in its application. The legislation which resulted was inevitably the result of compromise, ignoring the extreme labor and anti-labor positions (if such antithetical terms are ever accurate), accepting some of the wartime machinery, adding the suggestion of public representation, and shelving the suggestions of the ripe experience of the Commissioner of Mediation and Conciliation.

THE TRANSPORTATION ACT, 1920. TITLE III.

As finally passed the law was known as the Transportation Act, 1920;[8] of which Title III was devoted to a consideration of the railroad labor problem. According to the provisions of this Act it was the duty of the carriers and their employees to exert every reasonable effort to avoid interruption, due to labor dispute, of the service of the railroads. When such disputes arose they were to be settled, if possible, in conference of the interested parties and, when not so settled, were to be referred to the board authorized under the law to receive it.

These disputes, except as noted below, would naturally go to the Railroad Boards of Labor Adjustment which the

8. 41 Stat. L. 456, 469, Title III.

legislators hoped would be established under the law. These boards were to be established by agreement between management and employees (or organizations or groups of employees.) The two groups were to be equally represented on such boards. These adjustment boards were to have jurisdiction in disputes concerning grievances, rules, and working conditions, but not in wage disputes.

Disputes could be brought before these boards for consideration, in the following ways:

1. Upon the application of the chief executive of the carrier or employee organization directly interested;

2. Upon the written petition of 100 or more unorganized employees or subordinate officials directly interested;

3. Upon the Adjustment Board's own motion; or,

4. Upon the request of the United States Railroad Labor Board when that Board felt a dispute was likely substantially to interrupt commerce.

Title III stipulated that a Labor Board should be established consisting of nine members, three representing the carriers, three the employees, and three the public, respectively. The employee group and the employer group were each to nominate at least six names from which the President would select the required number and appoint them, by and with the consent of the Senate, as he would the members of the public group. If the parties concerned did not make the required nominations within 30 days of the passage of the Act, or if a vacancy occurred and within 15 days thereafter, the President, by and with the consent of the Senate, was to make the required appointments. Original terms for members of each group were to be one, two, and three years, and five years thereafter at $10,000 per annum. In order to insure the disinterested activity of the Labor Board the law prohibited members from being employed or holding office in any organization of employees or carrier, owning stock or bonds thereof, being pecuniarily interested therein. (Sec. 306).

In disputes involving grievances, rules and working conditions the Railroad Labor Board had jurisdiction:

1. Upon certification of the adjustment board that it had failed or would fail to reach a decision within a reasonable time;

2. Upon its own motion when it had reason to believe that the adjustment board had failed or was not using due diligence in the consideration of the dispute;

3. When there was no adjustment board. In this case the Labor Board assumed jurisdiction:

a. Upon the application of the chief executive of the carrier or employee organization directly interested;

b. Upon the written petition of 100 or more unorganized employees or subordinate officials of the carrier directly interested;

c. When the Railroad Labor Board itself thought that a dispute was likely substantially to interrupt commerce.[9]

When the dispute involved wages or salaries of employees the Board might acquire jurisdiction on application or petition as outlined above, or upon its own motion when the situation appeared grave. Furthermore the Board might, upon its own motion within ten days after a decision had been reached in conference of the interested parties suspend its operation if, in the opinion of the Board, such decision involved so great an increase in wages as would be likely to necessitate a substantial readjustment of the rates of any carrier; the Board would then hear the case and render a decision.[10]

VOTING. Each member of the Board had a vote. Concurrence of five of the nine members of the Board was necessary to a decision and, in wage decisions, at least one of the five was to be a member of the public group.[11]

RULES GOVERNING DECISIONS. Decisions of the Board were to establish wages and salaries that were just

9. Section 307:b.
10. Idem.
11. Section 307:d.

and reasonable, and decisions of the Adjustment Boards or Labor Board were to establish working conditions which were just and reasonable; taking into consideration the following, among other relevant circumstances:[12]

1. The scale of wages paid for similar kinds of work in other industries;

2. The relation between wages and the cost of living;

3. The hazards of the employment;

4. The training and skill required;

5. The degree of responsibility;

6. The character and regularity of the employment;

7. Inequalities of increases in wages or of treatment, the result of previous wage orders or adjustments.

These "relevant circumstances" bore a close resemblance to the criteria established by the Director General of Railroads during the Period of War Administration for the guidance of his advisors.

WITNESSES. The Labor Board was authorized by the law to subpena witnesses and records and in carrying out this object was privileged to invoke the aid of any United States District Court. Failure to obey the order of such a court was punishable as contempt.[13] Denying the Board access to records in its jurisdiction involved a penalty of $500 for each offense; each day thereof counting as a separate offense. The law directed every officer and employee of the United States to supply the Board such information, data, and record as each might have pertaining to the functions vested in the Board. This rule applied also to documents and records created by and under Federal control.[14] It is evident that this portion of the law

12. Section 307:d.
13. Section 310.
14. Section 311.

provided for compulsory investigation of railway labor disputes.[15]

In summary it may be said that Title III of the Transportation Act, 1920, was intended to take care of the situation created by the return of the roads to private control and to strengthen adjustment legislation where it had heretofore been weak. The framers of this legislation used the experiences under past enactments as a guide in the forming of the new law; in view of wartime experience they sanctioned the establishment of adjustment boards; the need for a permanent arbitration tribunal was met by the creation of the Railroad Labor Board upon which the public was represented. By failing to make arbitration compulsory and the awards legally binding the law succeeded in creating an advisory, rather than an arbitrating body.

THE OPERATION OF THE UNITED STATES RAILROAD LABOR BOARD

Very complex problems awaited the solution of the Board. It not only inherited the old problems, incident to every industry, of employer-employee relations, but was confronted with the changing conditions following the war, a new labor psychology animating a class anxious to retain gains to organized labor made during the war, an aggressive management determined to go back to the pre-war method

15. Other provisions of Title III were:
1. Prior to September 1, 1920, each carrier shall pay wages as determined by the appropriate agency under Federal control. Failure to do so is punishable by fine.
2. The Labor Board, when it has reason to believe that any of its decisions or those of an adjustment board is violated by carrier, employee, or organization thereof, may, upon its own motion hold a hearing and "determine whether in its opinion such violation has occurred and make public its decision in such manner as it may determine."
3. The activities of the Labor Board to be financed by Congressional appropriation.
4. "The powers and duties of the Board of Mediation and Conciliation" are not to extend to any dispute which may be received for hearing by any adjustment board or the Labor Board.—Sections 312-316.

of wage settlement. Labor was dissatisfied because of the delay in expected adjustments caused by the Director General's unwillingness to rule for a period following his occupancy and his consequent postponement of the whole issue of wages and working conditions.

Employee organizations were seeking the promulgation of new, and from their point of view improved, agreements of national scope; on the other hand the managements were seeking the abrogation of the national agreements. Many railroads were hostile to the new unions which had flourished under government control and were desirous, so labor alleged, of breaking them up. Add to all this the complexity of classification involving hundreds of situations and it is apparent that the problem confronting the Labor Board and demanding solution was exceedingly complex and intricate. It was necessary that something be done about these problems, and it was essential that whatever was done be accomplished in such a way as to prevent interruption to service.[16]

Failure of the adjustment boards to function as had been hoped did not make the situation confronting the Labor Board less difficult.[17] Due to mutual suspicion and antagonism men and management found it difficult to get together in the formation of adjustment boards, it being considered harmful by the unions to have the jurisdiction of these boards too local in character, while the carriers preferred local to national organization. When controversies arose the disputants were influenced by the thought of the Labor Board as the ultimate court of appeal and as a result cases were taken posthaste to that unfortunate body, the Labor Board soon being deluged with cases. It had been hoped that only major disputes such as those involving changes in wages, rules and working conditions would come before the Labor Board for decision; the others such as involved questions of interpretation of rules,application of

16. Labor Board Decisions, Vol. I, No. 2. A full discussion of this subject will be found there

17. Railway Age, Vol. LXX, p 79 (January 7, 1921).

awards, and so on being settled by adjustment boards formed by mutual agreement.

April 20, 1920, the first case was decided by the Board. Between that date and the close of the year 41 other cases were decided. This may seem like a small number when compared with the 5000 odd cases the Board has decided since that date. But it must be remembered that the labor problems on the railroads at that time represented a great forest or an unknown sea, and it was the duty and the task of the Labor Board to blaze the way and chart the unknown course. Great questions of wages, rules, and working conditions had to be decided as soon as possible if peaceable conditions were to be maintained. Practically only two of the cases which came before the Board in 1920 were of this character; the rest could well have been decided either in conference of the interested parties, or by adjustment boards formed by mutual agreement. In this connection Table I is enlightening.

TABLE I

Distribution of Cases, April to December 31, 1920	No.
Application for hearing	1
Bulletining of position	1
Dismissal of employees	5
Jurisdiction over electric roads	1
Observance of rules	1
Rules and working conditions	24*
Re-opening of cases	3
Sickness	1
Vacation with pay	1
Wages	5
	43
Account of duplication minus	1
	42

*Request for changes in rules agreement—2.
Requests for interpretation of rules—22.

There were five decisions concerning wages. Decision No. 2 was in this category and was termed "basic" by the Board as it made fundamental changes in the wage rates. The same parties who applied for the Board's decision in this connection, also made request for a pronouncement on rules and working conditions. While that question was not decided at this time, the Board told of its postponement in Decision No. 2, and gave its reasons for this delay. Therefore in the table above Decision No. 2 is listed twice, once under wages and once under rules. This duplication is taken care of in the totals. Other requests for changes in rules were met with a reference to Decision No. 2. Decision No. 3 is listed as a wage decision, as it made employees of the railroad express companies parties to Decision No. 2.

One decision dealt with the jurisdiction of the Labor Board over electric roads which were not a part of a steam transportation system. The Board ruled that it was without jurisdiction.[18]

Five cases were concerned with the dismissal of individual employees with, or without hearing. It is obvious that cases such as these should have been decided in conference or by mutually constituted adjustment boards, particularly when the Labor Board was plentifully supplied with major problems with which to wrestle.

Twenty-two decisions were rendered in regard to the interpretation of rules. For example: a conductor claims pay at passenger rates for time lost while waiting for his caboose; according to the rule when does a fireman need rest? And so forth.[19]

SUMMARY. No longer satisfied with the working of the Newlands Act and feeling that something should be done about railroad labor problems in view of the return of the roads to private control, Congress passed the Trans-

18. Decisions, Vol. I. No. 33.
19. Decisions, Vol. I, Nos. 35, 36, and 39 respectively.

portation Act, 1920, of which Title III relates to the handling of labor controversies.

Under this Act a Railroad Labor Board was established having jurisdiction over all wage controversies and final review in all disputes involving grievances, rules, and working conditions. To simplify the work of the Board the law authorized the establishment, by mutual agreement, of bipartizan adjustment boards which would have immediate jurisdiction in all disputes involving grievances, rules, and working conditions. The unwillingness of the carriers and their employees to organize adjustment boards led to the deluging of the Labor Board with many minor problems at a time when the Board was grappling with questions of considerable moment.

To expedite the handling of such cases the Board established three Bureaus equivalent, in the problems and groups with which they dealt, to the old wartime boards of adjustment. At the head of each Bureau were three Labor Board members, one from each group. Under their jurisdiction was an examiner who handled the preliminary work in most cases coming within the purview of his group. Many cases needed to go no further than this and needed only the formal approval of the Board. Other cases had to come before the Board in full and open session.[20]

20. Statement to the writer by Examiner Walsh of the Labor Board, at Chicago, August 1925.

CHAPTER II.

Principles Underlying The Decisions of The Board

When the Railroad Labor Board was established numerous questions awaited attention. These involved the adjustment of controversies, rules, the making of agreements, the selection of representatives, the determination of wages, and so on. Sometimes the controversies involved roads in good financial condition; at other times disputes arose on roads which were in financial difficulties. How did the Labor Board deal with the labor problem under the varying conditions in which it was presented? Was the Board guided, at least in some measure, in its decisions by the intent of Congress as embodied in the Transportation Act, 1920? This chapter attempts to answer these questions.

A. THE CONGRESSIONAL INTENTION.

As in previous legislation it was the desire of Congress to prevent interruption to the service of the railroads by reason of disputes involving labor.[1] This was shown in the earlier discussion, where the background of that section of the Transportation Act, 1920, which deals with the railroad labor problem is revealed. Title III was essentially a compromise between those interests desiring a laissez faire policy on the part of Congress and those wishing a considerable amount of intervention and a drastic policy. Specific mention was made of the necessity of securing the establishment of reasonable wages and working conditions because it was believed that these were vital to the furtherance of the main objective of the Board: the avoidance of interruption to service. One might expect to find, therefore, that the principles underlying the decisions of

1. Title III. Section 301.

the Board would be those calculated to help in the fulfilment of the primary objective.

B. THE BOARD'S EMPHASIS ON COLLECTIVE BARGAINING

There was nothing in Title III which forbade the management dealing with its employees individually, but it can hardly be said that either the law or the Board encouraged individual bargaining. The dispute of a company with one individual would be hardly of sufficient importance to endanger the service of the carrier, and it was in the service that the Board was primarily interested. Disputes of this nature, therefore, would not come under the Board's jurisdiction and this very fact would operate to promote collective bargaining as far as the employees were concerned, for this would be the only way they could secure the advantage of the final court of appeal when they felt that circumstances required it. If one employee on the Baltimore and Ohio Railroad, for example, not belonging to any organization and believing that he was not securing proper treatment from the officials of the carrier, decided to take his case to the Labor Board he would receive a reply from the Secretary informing him that the Board had no jurisdiction over his case. If he should be able to get enough other workers in his group, i. e. at least 100 in all, to sign a petition concurring with him in his grievance he would be able to secure action.[2]

Whenever a dispute arose the Board did not admit the validity of any decision of either party which did not secure the agreement of the other interested party. The Board took the position that all agreements concerning wages, rules and working conditions should be worked out in conference between management and men or their representatives, and refused to declare that it had immediate jurisdiction in any dispute where no attempt had been made to ad-

2. Statement of the Secretary to the writer.

just the differences in conference. This attitude of the Board sometimes led to interesting consquences, as will be shown later. In 1921 there were sixteen decisions in which the Board claimed the proper conference had not been held and remanded the dispute for further consideration by the parties involved. Of these decisions No. 82 was the first and will serve as an example.[3]

This case involved the interpretation of a rule and the definition of a term, "outlying points." When employees ride the trains in order to get to or from the work to which they are ordered, such riding is known as "deadheading." These disputants had a rule which provided that "when deadheading to relieve men at outlying points" certain pay would be allowed. The controversy arose because the interested parties could not agree as to the meaning of the term. In its decision the Board said:

> At the hearing of this case before the Board it developed that this was a request to interpret the meaning of a rule over which it was not shown that a bona fide dispute actually existed; that is, a claim for pay under the rule and involving the question asked has not been officially passed upon by the carrier. The case is, therefore, dismissed as the requirements of the Transportation Act, 1920, have not been complied with.

There was nothing in the law to prevent conferences which but formally complied with the provisions of the law. Each side could present in such conferences demands which each party, respectively, knew in advance would not be considered, much less granted; and the Board could not control the spirit of the conference, beyond ruling that "the presentation of irreducible demands" did not constitute a conference.

In the prevention of serious disputes it would seem a natural proposition that the disputants first confer; but it

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3. Order of Rwy Conductors v. Norfolk and Western. Decisions: vol. II, p 49. See also Nos. 89, 822, 1145, 1146, 1147, 1199, 1331, 1551, 2256, 2387, 2510, 2511.

was not always clear just who the interested parties were, nor who were the proper ones to confer. The following is a case in point.[4]

This dispute concerned working conditions on the Boston and Maine Railroad. The working conditions of some 900 employees of this road, members of the American Federation of Railroad Workers, were regulated by the national agreement negotiated by the Director General with the Associated Shop Crafts. Rule 3 of this agreement provided, in part, that when necessary, employees should have their cases presented by "the duly authorized local committee or their representatives." The United States Railroad Administration interpreted this committee to be that of an organization party to this agreement, that is, the Associated Shop Crafts. Shortly prior to April 18, 1920, certain employees, members of the American Federation of Railroad Workers but not of the organization party to this agreement, felt themselves aggrieved. They sought redress through their organization in conference with the carrier, a committee of the American Federation of Railroad Workers being expressly designated. The carrier refused to confer on the ground that those seeking to confer were not the proper parties to seek such a privilege. The complainant organization claimed that its members were subject to the agreement which was the subject of discussion. The Labor Board ruled that section 301 of the Transportation Act made it the duty of the officers of the carrier to confer with the committee of the complainant organization on the subject of the working conditions involved in this dispute.

What happened if disputes arose and no attempt was made by either party to have a conference in the matter? What was the attitude of the Board if such a conference was requested by one party and either denied or ignored by the other? It has been pointed out that the law made it the duty of the one party to a controversy to meet in confer-

4. Vol. II, Decision No. 70.

ence the disputants seeking it. In the other case, under the law, the Labor Board had the right to assume the initiative when it felt that proper steps were not being taken and that the dispute was likely substantially to interrupt commerce. It would appear from this that if the dispute was of a minor nature the Board might be willing to let it drift along, and that the Board's intervention was prompted by danger of interruption to operation rather than by the fear that wages, working conditions, and so forth, were not just and reasonable. When the B oard believed that certain parties were not obeying the law in this regard it could cite them to appear before it for a hearing in these premises and, if it found that such violation existed in fact, it could so rule and publish its findings.[5]

The Board, then, was not directly interested in any disputes except those which involved collective bargaining. This was implied in the law, which specified that the proper officials of the labor organizations represent labor in its bargaining, and that when men were unorganized a round robin containing 100 or more signatures was necessary to bring the dispute to the attention of the Labor Tribunal. Before the Board was willing to take cognizance of a controversy every effort must have been made to settle the dispute in conference, that is, by collective bargaining. Failure to make this attempt was regarded as non-compliance with the provisions of the Transportation Act and a just cause for remanding the controversy to the disputants.

> In view of the fact that the record clearly shows that no conference has been held between the parties with reference to the justness or the reasonableness of the wages fixed by Decision No. 2 of this Board, the Board does not deem it necessary to decide to what extent, if at all, a carrier's financial condition is a factor in the determination of just and reasonable wages to be paid by the carrier.[6]

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5. Section 301 and 313.
6. This carrier had presented "financial inability" as a reason for ignoring the wage decision of the Board

In the judgment of this Board the conferences heretofore held do not constitute a compliance with section 301 of the Transportation Act, for the reason that no conference has been had between the parties with reference to the justness and reasonableness of the present wages.

It is the decision of this Board that it is without jurisdiction to determine the present dispute until section 301 has been complied with by conference of the parties, the subject matter of which conference shall be whether the present wages are just and reasonable.

The Board further decides that further consideration of this dispute be deferred until it shall be made to appear that the parties have conferred and disagreed on the question of whether the present wages are just and reasonable, based on the relevant circumstances as required by the Transportation Act, 1920, or until the parties have refused to enter into conference on said question.7

The Board did not always find itself in a position to remand the dispute to the opponents in a controversy, for the dispute might not be settled in that way until after a strike occurred; and the Board recognized "that the intent of Congress in enacting Title III of the act was to prevent interruption to the operation of any carrier growing out of disputes between the carrier and its employees."8

As has been previously indicated, conferences, when held, might be merely perfunctory. The Board had this to say concerning such a situation:

The duty imposed by section 301 on all carriers and their officers, employees and agents to consider and if possible to decide in conference all disputes between carriers and their employees has not been performed by the parties hereto either with regard to the wage or the working conditions portion of this dispute. The record shows that the representatives of the carriers were unwilling to assume the responsibility of agreeing to substantial wage increases. Hence the conference. . .on the side of the carriers was merely a perfunctory performance of the statute. Nor was the action of the organizations

7. Decision No. 89. 1921.
8. Decision No. 91. 1921.

with regard to the individual carriers more than perfunctory. Naked presentations as irreducible demands of elaborate wage scales carrying substantial increases, or of voluminous forms of contract regulating working conditions, with instructions to sign on the dotted line, is not a performance of the obligation to decide disputes in conference if possible. The statute requires an honest effort by the parties to decide all matters in dispute in conference, it is their duty to there decide all that is possible and refer only the portion impossible of decision to the Board.9

Although, in the opinion of the Board, section 301 of the law had not been complied with, it assumed jurisdiction of the dispute in this instance as "it has been one likely substantially to interrupt commerce."10

C. RULINGS CONCERNING AGREEMENTS

During Federal control the Director General entered into contracts with organizations of railroad employees which, because of their scope, were known as national agreements.11 Their provisions covered various classifications of employees and grades within each class, determined and specified the work to be done in each grade and indicated the hours of service and times of payment, outlined the method of reducing forces, the determination of seniority, the adjusting of grievances and the training of apprentices. In addition to these national agreements there were numerous orders and supplements issued by the Director General along the same lines and incorporated into the regular agreements.

On March 20, 1920, the employees requested that the carriers' representatives secure authority to continue these national agreements in force, together with the supplemental orders incorporated therein, after the termination of Federal control.12 On March 30th the representatives of

9. Decision No. 119. 1921.
10. Idem.
11. See the Board's discussion in Decision No. 2, 1920.
12. Idem. See Decision 2.

the carriers declined to request such authority, and, no agreement being reached, the entire matter was referred to the Railroad Labor Board on April 16, 1920. On May 3, 1920, the Association of Railway Executives informed the employeee organizations it was recommending the following to each member road:

> That the matter of continuing the national agreements, interpretations thereof and general orders and all other arrangements negotiated between the United States Railroad Administration and the so-called recognized labor organizations shall be handled by negotiation between the management and employees of each individual railway.13

May 1, 1920, the organizations made their request to each carrier, but these requests were denied by the roads which gave as their reason that the matter had been referred to the Labor Board for decision. The Board ruled concerning the matter in Decision No. 2 saying:

> The Board assumes as the basis of this decision the continuance in full force and effect of the rules, working conditions and agreements in force under the authority of the United States Railroad Administration. Pending the presentation, consideration and determination of the questions pertaining to the continuation or modification of such rules, conditions and agreements no changes therein shall be made except by agreement between the carrier and the employees concerned.

In addition the Board said that other hearings would be held on the subject and final decision would be made as soon as practicable. The promised decision of the Board was not forthcoming until April 14, 1921. It was Decision No. 119.

It was the opinion of the Board that the parties to this controversy concerning agreements had not properly conferred within the meaning of section 301 of the Transportation Act and, as already pointed out, it did not feel that it had immediate jurisdiction in disputes which were not properly brought before it. The words "immediate

13. Quoted by the Board in Decision No. 2. 1920.

jurisdiction" are used here because the Board was not willing to disclaim jurisdiction altogether in such a case. In claiming that the conference had not been held in proper fashion in this controversy the Board said "Naked presentations as irreducible demands . . . with instructions to sign upon the dotted line, is not a performance of the obligation to decide disputes in conference if possible."[14]

However, the Labor Board assumed jurisdiction in this controversy because the matter was, in its opinion, one likely substantially to interrupt commerce. As always, apparently, the first concern of the Board was not the justness or reasonableness of the working conditions (or wages), per se, then existing, but the danger that transportation might be interrupted.

Termination of the national agreements was asked by the carriers. They claimed that the national agreements were too broad and extensive to be workable without great friction since they were national, and local conditions differed. Furthermore, said the roads, when local agreements are satisfactory (and the roads thought they were in the present case) there is no need for national agreements; and in the adjustment of disputes arising under agreements a more reasonable attitude is found in local than in national conferences.

Continuance of the national agreements was asked by the employee organizations. They claimed that local conferences incurred economic waste of time of the employees, led to a multiplicity of controversies, irritations and disturbances. They did not regard local conferences as exactly fair to the employees, for in such conferences and disputes the full weight of all the carriers associated in the Association of Railway Executives would back each conferring carrier and thus bring about a wide disparity of power. The employees' representatives claimed that the general conditions arising out of the abrogation of the national

14. Decision 119. 1920. See fuller quotation earlier in this section of the chapter.

agreements would be such as to breed marked discontent; a discontent likely substantially to interrupt commerce.

After due consideration the Board announced that it could not feel that in every instance the national agreements were just to the carriers, individually or as a whole; but it could not see its way clear to terminate the agreements at once, as to do so would leave certain roads without governing rules. On the other hand, it could not well continue the old rules until such time as new rules were adopted as an action of that kind might very probably postpone the adoption of the new rules indefinitely. Therefore, whatever decision it did make would have to be made in the light of these problems.[15]

In Decision No. 119 the Labor Board extended the national agreements to July 1, 1921, and instructed the carriers and employees to hold conferences on the subject of rules and working conditions as soon as possible, meanwhile keeping the Board informed of their agreements and disagreements. Although the Board extended the life of the agreements to July 1, 1921, it reserved the right to terminate them at a prior date for certain classes of employees of any carrier if it should appear to the Board that these classes were unduly delaying the progress of the negotiations. It made the same reservations regarding the carriers. Any rules agreed upon must be in conformity with certain principles outlined by the Board and, in case agreement concerning rules could not be reached in conference, the Board promised to promulgate rules as soon after July 1, 1921, as possible and make them effective as of that date. The Board undertook to continue hearings on the question in order that it might be kept informed of progress made and act accordingly. It was made clear in this decision that agreements concerning rules and working conditions entered into by the roads and their employees since March 1, 1920, were not affected by it.

15. See Decision No. 119, 1921, for a full discussion.

The Board decided that the following principles be adhered to in the making of agreements.[16]

1. An obligation rests upon management, upon each organization of employees, and upon each employee to render honest, efficient, and economical service to the carrier serving the public.

2. The spirit of cooperation between management and employees being essential to efficient operation both parties will so conduct themselves as to promote this spirit.

3. Management having the responsibility for safe, efficient, and economical operation, the rules will not be subversive to necessary discipline.

4. The right of railway employees to organize for lawful objects shall not be denied, interfered with, or obstructed.

5. The right of such lawful organization to act toward lawful objects through representatives of their own choice, whether employees of a particular carrier or otherwise, shall be agreed to by management

6. No discrimination shall be practiced by management as between members and non-members of organizations or as between members of different organizations, nor shall members of organizations discriminate against non-members or use other methods than lawful persuasion to secure their membership. Espionage by carriers on the legitimate activities of labor organizations or by labor organizations on the legitimate activities of carriers shall not be practiced.

7. The right of employees to be consulted prior to a decision of management adversely affecting their wages or working conditions shall be agreed to by management. This right of participation shall be deemed adequately complied with if and when the representatives of each of the several classes directly affected shall have conferred with the management.

8. No employee shall be disciplined without a fair hearing by a designated officer of the carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this principle. At a reasonable time prior to the hearing he is entitled to be apprised of the precise charge against him. He shall have

16. Idem.

reasonable opportunity to secure the presence of necessary witnesses and shall have the right to be there represented by counsel of his own choosing. If the judgment shall be in his favor, he shall be compensated by the wage loss, if any, suffered by him.

9. Proper classification of employees and a reasonable definition of the work to be done by each class for which just and reasonable wages are to be paid is necessary, but shall not unduly impose uneconomical conditions upon the carriers.

10. Regularity of hours or days during which the employee is to serve or hold himself in readiness to serve is desirable.

11. The principle of seniority long applied to the railroad service is sound and should be adhered to. t should be so applied as not to cause undue impairment to the service.

12. The Board approves the principle of the eight-hour day, but believes it should be limited to work requiring practically continuous application during eight hours. For eight hours' pay eight hours' work should be performed by all railroad employees except engine and train service employees regulated by the Adamson Act, who are paid generally on a mileage basis as well as on an hourly basis.

13. The health and safety of employees should be reasonably protected

14. The carriers and the several crafts and classes of railroad employees have a substantial interest in the competency of apprentices or persons under training. Opportunity to learn any craft or occupation shall not be unduly restricted.

15. The majority of any craft or class of employees shall have the right to determine what organization shall represent members of such craft or class. Such organization shall have the right to make an agreement which shall apply to all employees in such craft or class. No such agreement shall infringe, however, upon the right of the employees not members of the organization representing the majority to present grievances either in person or by representatives of their own choice.

16. Employees called or required to report for work, and reporting but not used, shall be paid reasonable compensation therefor.

In brief, the Board suggested that in the making of agreements these principles shall be kept in mind: The duty

of management and men to serve the public efficiently, the need for a spirit of cooperation, union recognition, the open shop, collective bargaining, the right to a fair hearing, scientific management in the defining and allotment of tasks and hours, the principle of seniority, the eight-hour day, protection of health and safety to workers, proper training of apprentices, freedom in the choice of representatives.

Two of these principles have been discussed earlier in this study: the duty of management and men to serve the public efficiently and the need for a spirit of cooperation. An examination of some of the decisions dealing with the other principles may prove instructive.

Unions shall be recognized by the carriers as a lawful association for collective bargaining, and employees shall not be discriminated against because of membership, or non-membership in a union. What attitude should the Board take when this principle is apparently violated? The attitude the Board did take is shown by the record in the case involving the discharge of two section foremen for belonging to a union. For the purposes of this study it is necessary to use only the history of the one man.[17]

J. H. Hicks entered the service of the Butler County Railroad Company as a section laborer and was promoted to section foreman seven years later, October, 1916. He was discharged by the carrier December 1,, 1920. General statements were made to the Board as to the reason for this action of the railroad company, but the motivating reason appeared to be the fact that Hicks was a member of a union, the same union to which the men under him belonged. The statement of the carrier made this clear.

> The company has always insisted upon exercising entire freedom of action in selecting its subordinate officials. It does not inquire who among the men belong to labor unions or who do not, but the management feels that the economic interests of the public and of

17. Decision No. 224, 1921. See also Nos. 1018, 1019, 1020, 1975, 1982, 2088, 2089, 2305, 2306, 2307, 2308.

the corporation, and, in fact, public safety, require for the company the widest freedom of action in the selection of those who are to direct the work of the section men and see that their duties are expeditiously, economically, and properly performed, and to attain that result it is entitled to and must have the undivided allegiance of the foremen.[18]

Here, then, is a two-fold problem: that of a man being discharged because he was a member of a labor union; and the fact that he was a member of the same union as the men to whom the duties of his job made it necessary for him to give orders. How did the Board deal with this problem?

The Board began by saying that the statement of the carrier left no option to that body to do anything but discuss the broad question of union membership so definitely presented. It professed its awareness of the rulings of the United States Supreme Court concerning the rights of individuals, corporations, et cetera, in the employing of labor. For example (245 U. S. 229) the Court said,

This court repeatedly has held that the employer is as free to make non-membership in a union a condition of employment ,as the workingman is free to join the union, and that this is a part of the constitutional rights of personal liberty and private property, not to be taken away even by legislation, unless through some proper exercise of the paramount police power.

While not questioning the soundness or justness of such decisions the Board felt "bound to assume that these principles were equally known to and recognized by Congress when it passed the Transportation Act, 1920," and, therefore, "it is the duty of the Labor Board to construe and apply the provisions of the Transportation Act on this assumption and in view of these decisions."[19]

The duty is imposed on the Board of deciding disputes as to wages or working conditions on the basis of establishing such as are in the opinion of the Board just and reasonable—not according to the strict legal rights in all instances of either party, for one party might

18. Decisions, Vol. II, p 251.
19. Decisions, Vol. II, p 254.

have a legal right to prescribe a wage for which the other party would have a legal right to refuse to work; or the carrier might have a legal right to impose a rule or working condition under which the employees have a legal right to decline to serve.20

Public interest demands the uninterrupted operations of the carriers. A dispute of this nature might possibly result in a deadlock leading to a strike. It was the business of the Board to protect the public interest in these disputes. What could the Board do to protect this interest, and what would be the basis of its action?

In this decision it was pointed out by the Board that two views could be taken of the purpose of Congress in passing that title of the Transportation Act which treats of the railroad labor problem: In view of the vital interests of the public so dangerously threatened Congress, in passing the legislation constituting the Railroad Labor Board, gave expression to that "paramount police power" by which unquestioned legal rights are limited in the public interest; "the other is that the decisions of the Board are only persuasive and will only have such effect as both parties are willing to concede, or as public opinion may by moral pressure enforce." Those who adhere to this "other view" point out that Congress gave the Board no power to issue writs and made the effectiveness of its decisions dependent upon public opinion.

This part of the question was legal in its nature, and the Board wisely granted that ultimate decision was with the courts; but that, in the meantime, its duty was clear, under the law to decide these questions concrning union membership. For if the interested parties both insisted, to the full, on their legal rights the attempts to adjust disputes would be fruitless so far as the Board was concerned.

It was therefore decided by the Board that the action of the carrier in discharging Hicks because of membership

20. Idem.

in a union was "unfair, unjust and unreasonable," and directed that he be reinstated in full enjoyment of his seniority rights and reimbursed for losses suffered.

In the case of the Illinois Terminal Railroad Company thirty-five of the employees were discharged and no reason given other than the intimation that it was because of union affiliation. The employee organization brought the dispute to the attention of the Labor Board, the carrier making no submission except to say,

> Replying to your favor of April 20 in regard to hearing to be held May 8 next in connection with complaint of the United Brotherhood of Maintenance of Way Employees and Railroad Shop Laborers. Beg to advise that this company will not be represented at this hearing.21

In its decision the Board had before it only the evidence submitted by the employees. It ruled that "the 35 employees shall be restored to their former positions with seniority unimpaired and paid for all time lost, less any amount they may have earned in other employment."22

Membership in a labor union, then, according to the decisions of the United States Railroad Labor Board was not an adequate reason for discharging or discriminating against employees; such action was in violation of the Board's decisions and in contravention of the Transportation Act, 1920. What was the Board's attitude when nonmembership in a union, or in a particular union, was made the basis of discrimination?

C. A. Brown entered the service of the San Antonio and Arkansas Pass Railroad as a switchman. Sixteen months later he was relieved of his position by F. G. Coppenger who had approximately five months less seniority than he. Brown took up the matter with the chairman of his grievance committee, with the superintendent of the railroad

21. Decisions, Vol. III, p 473.
22. Decision 1056, 1922.

(from whom he received no reply) and with the secretary of the trainmen's committee.

From this secretary he learned that he was denied seniority rights and removed from the job because he was not a member of the Brotherhood of Railroad Trainmen and "because of the agreement the carrier had negotiated and signed providing that 85% of the employees in yard service must be members of the Brotherhood of Railroad Trainmen, and that those who were not would be deprived of their seniority rights if that became necessary."[23]

A percentage rule is involved. A rule of this kind was in the agreements of a comparatively small number of Class I carriers prior to federal control and these were abrogated by General Order No. 8 of the Director General. After the termination of federal control effort was made to have them re-written in the agreements. A rule of this kind does not obtain for any other organization of employees than the Brotherhood of Railroad Trainmen which not only represents brakemen and flagmen but sometimes switchmen as well. The tendency has been to make the percentage high—the former 85% on the International Great Northern Railroad being increased to 90%.

An interested party in this dispute was the Switchmen's Union of North America, recognized by the President of the United States and the Director General of Railroads as a craft organization. This union negotiated the first percentage agreement ever signed, but later renounced the practice.

In deciding that C. A. Brown should be reinstated to his former position and seniority status with pay for all time lost the Board gave expression to its views concerning the problem raised in this dispute. In the opinion of the Board this percentage rule was discriminatory and unfair in that it took the matter of union membership out of the realm of free choice and made it practically compulsory. "Certainly, an agreement by which a carrier and one organi-

23. Decision 1975, 1923.

zation combine to compel men to join that organization or face the alternative of the loss of employment and seniority is subversive of the individual liberty of the employee and out of harmony with the genius of our free institutions."[24]

If an agreement of this kind, said the Board, can be made applicable to one class of employees, it can be made to apply to all classes; if a percentage agreement of 85% is regarded as right, the percentage of 100 may be regarded as proper. It is a difference in degree, the principle being the same in both cases.

Under the law the representatives of a majority of a particular class might negotiate agreements for the men of that class, but that did not permit the negotiation of an agreement favorable to the majority and discriminatory against the minority.

> The Railroad Labor Board holds that said article . . . violates the transportation act, 1920, and is null and void in so far as it conflicts with the right of an employee to be or not to be a member of any particular organization or purports to make his retention in service or the enjoyment of his seniority rights dependent upon his membership in such organization.[25]

Regarding the "open shop" the Board said in this same decision that "it must be remembered that railway employees have not advocated the closed shop, and this principle"—percentage, as illustrated above—"has not been recognized elsewhere in the railway service."[26]

Collective bargaining or, rather, the right of the railroad workers to bargain as a group was recognized by the Board as a principle worth maintaining. The pronouncements of the Board in this connection were discussed earlier in this chapter.

Right of the employees to a fair hearing in cases of discipline, dismissal, changes in working conditions and rates of pay came under the same category—the duty of

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24. Decisions, Vol. III, p 642.
25. Decision 1975, 1923.
26. Idem.

the interested parties to decide all controverted matters by conference. More particularly, as regards discipline and dismissal, the position of the Board was revealed in the case of the Illinois Terminal Railroad Company which discharged seventeen of its mechanical department employees without a hearing (according to the statement of the labor organization, which was the only submission made). In its decision the Board ruled, that the employees in question should be reinstated with seniority unimpaired and with pay for time lost.[27]

Principle No. 9, in the list promulgated by the Labor Board in Decision No. 119, said that work should be properly classified and reasonably defined. Extended discussion of this point is unnecessary as it will be readily recognized that misunderstandings leading, possibly, to serious disputes may have their rise in ambiguity of the terms of an agreement regarding rules and working conditions. In many instances the difficulties which were brought to the attention of the Board were clarified by judicious interpretation. In cases of this kind the Board, being a permanent body, was able to build up a mass of precedent and, when problems were sent to the Board for consideration in many instances it was possible for the Board to settle the issue by citation of precedent.[28]

One of the strongest influences which acts to keep employees in the transportation service even when not fully satisfied with wages or working conditions is the principle of seniority. Seniority is to the individual worker what good-will, the result of a good record of long standing, is to a business. No firm is willing to lose its good will by a temporary cessation of business. Few employees are ready to forego the advantages of seniority in order to fulfill the whim of a moment, even when there is considerable reason for doing so. Positions offering certain advantages, includ-

27. Decision 1055, 1922. See also, 1031, 1041, 1152, 2153, 2289.
28. Statement of Examiner Walsh of the Railroad Labor Board to the writer in August, 1925.

ing higher rates of pay, are open to properly qualified men on the basis of their seniority; i. e. the length of time they have been in service. Usually the application of seniority is covered by agreement between the men and the carriers.

During the period of Federal control a rule in regard to seniority was promulgated by the United States Railroad Administration, and this rule was continued in effect by the decision of the Railroad Labor Board. The rule read as follows:

> It is not possible to lay down a definite seniority rule because ability and merit are of paramount importance in this highly responsible work, and in any event must govern; but where the ability and merit of two men is equal, the choice of positions, either within the same office or between different dispatching offices of a division, so far as possible should be determined upon the basis of seniority.29

Principle 15 as given in Decision No. 119 occasioned considerable controversy. It said, in part, that "the majority of any craft or class of employees shall have the right to determine what organizations shall represent members of such craft or class." This question of employee representation presented a problem on the Pennsylvania System which was ultimately carried into court; but the legal aspects of this difficulty will be reserved for later discussion. A resume of the history of this case throws considerable light upon this principle as a basis of collective bargaining.

In an ex-parte submission the Federated Shop Crafts of the Pennsylvania System raised these questions:

1. Has the majority of the employees of any craft on the Pennsylvania System the right to designate an organization to represent said employees in negotiating an agreement with the carrier covering rules and working conditions?

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29. Decision 1025, 1922. The Board's attitude toward the eight-hour day is discussed elsewhere in this study; and the other two principles never resulted in disputes of a serious nature.

2. Has a majority of the employees of such craft the right to be represented in such negotiations by anyone other than an employee of said carrier?

3. Has the carrier complied with the law in the method pursued by it to ascertain who are the representatives of the shop employees with whom it shall negotiate rules?

System Federation No. 90 of the American Federation of Labor duly elected its chairman and authorized him to confer with the carrier which he essayed to do on May 24, 1921. The carrier refused to confer on the ground that no adequate proof had been presented to show that this Federation actually represented a majority of the employees and suggested that, in order to expedite matters, a ballot should be taken to determine this question. Such a ballot had been prepared by the carrier. The Federation objected to this ballot for several reasons. It claimed that the system federation did represent a majority of the employees of the shop crafts and stated that the carrier did not actually deny that fact; therefore why go to the unnecessary bother and delay of having a ballot cast on the subject? It declared, further, that the ballot proposed by the carrier was not in accordance with the law since it failed to allow the employees to vote for an organization to represent them, requiring them to designate individuals and stipulating that the designated individuals must be employees of the carrier. It stated that the ballot did not allow for system representation but for regional representation only and suggested that the ballot be amended to allow the employees to vote for an organization to represent them if they choose; but this request the carrier refused to grant.[30]

At this juncture System Federation No. 90 warned the employees not to vote the ballot suggested and presented by the carrier, saying that it was illegal and urging them to vote the Federation's own ballot. This latter bal-

30. Decision No. 218, 1921. See also Nos. 220, 583, 998, 1416, 1833, 1877, 1970, 1971, 1989, 1991, 2019, 2022, 2032, 2048.

lot contained a blank for any organization the employees might desire to name, but they were urged to vote for Federation No. 90 as their representative. The ballot did not permit the employees to vote for individuals as representatives.

As a result of this controversy two elections were held. An election was conducted by the carrier and the men elected on this ballot were recognized by the railroad, although the Federation claimed that a majority of the employees did not vote for the candidates so recognized. The carrier did not deny this allegation but contended that since all employees had had an opportunity to vote the election should stand by authority of a majority of those voting, as in American national political contests elections are not invalidated because a majority of the American people eligible to vote do not actually cast ballots. The carrier contended that, conferences not having been held, the Labor Board had not acquired jurisdiction in a lawful manner over the dispute concerning rules and working conditions when Decisions No. 2 and No. 119 were rendered. In answer the Labor Board asserted that it had properly acquired jurisdiction, "but that question is not of prime importance in this case."[31]

In its analysis of the problem the Board considered that, aside from more or less irrelevant claims, a dispute concerning rules and working conditions was before it; a dispute in which the Board had unquestioned jurisdiction according to the provisions of the Transportation Act—"whose applicability is questioned by neither party."

> It shall be the duty of all carriers and their officers, employees and agents to exert every reasonable effort and adopt every available means to avoid any interruption to the operation of any carrier growing out of any dispute between the carrier and the employees or subordinate officials thereof.
>
> All such disputes shall be considered and, if possible, decided in

31. Decision 218, 1921.

conference between representatives designated and authorized so to confer by the carriers, or the employees or subordinate officials thereof, directly interested in the dispute.

The Labor Board shall hear, and as soon as practicable decide, any dispute involving grievances, rules or working conditions . . . upon the application of the chief executives of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute

The Labor Board may make regulations for the efficient execution of the functions vested in it by this title. (Referring to Title III of the Act).32

In its decision the Board disclaimed any intention to inquire into the motives of the parties, as for example, in at this time requiring particular proof of representation. The Board ruled that the law required that the employees' representatives be "designated and authorized" by the employees, which, in America, means designated and authorized by a a majoirty. Although the method of ascertaining actual representation was not prescribed in the Transportation Act the Board thought the use of the ballot in this connection was eminently proper. But—

The carrier had no more right to assume control of the selection of the representatives of the employees than the employees would have to supervise the naming of the representatives of the carriers.33

No political party, said the Board, would submit to having its primary election held and managed by the opposing party. The carrier had the right to know that the election, when held, was properly conducted and the results announced correctly; but the Labor Board could not admit that the carrier was justified in refusing to allow the name of an organization to appear on the ballot, for in any case the employees were not compelled to vote for the organization. Representation by an organization had been recognized for years, recognized even by the Transportation Act

32. Title III; sections 301, 307, 308
33. Decision 218, 1921.

itself. In the third paragraph of the quotation from the law given above "the chief executive of any organization of employees" is authorized to submit to the Labor Board any dispute wherein disagreements have occurred in the conference between carrier and employees. The Board held that this representative need not to be an employee of the carrier, for the carrier may select a representative who is neither a director nor a stockholder of the road. However, in this instance, the employees were not asking that the name of an outsider be placed on the ballot. The Board held, also, that the carrier had no legal authority to divide the system into regions for the purposes of the election; the action was not only unlawful, but might be very unjust.

Neither election was considered valid by the Board as the ballot provided by the labor organization did not allow the employees to vote for individuals, thus ignoring the rights of the non-union men, and the election of the carrier, on its own submission, was held to be unrepresentative. Exclusive of its Altoona Shops only 3,480 men voted out of 33,104 entitled to vote; so 89.5% of the employees interested in the negotiations "were virtually disfranchised." In view of this reasoning the Board considered its plain duty to be the providing of a method which would protect the parties involved, and said, "There is no question of the closed or open shop involved in this dispute and no other real matter of principle. The question involved is merely one of procedure." The Board then formulated a sample ballot containing blanks for the naming of any individual or organization, indicated the order of procedure, and decided that a new election should be held.[34]

According to this decision employees had the right to engage in collective bargaining and to select whom they would to represent them. They might choose to be represented by an individual, employee or non-employee of a particular carrier, or an organization. However, in the

34. Decision No. 218, 1921. The legal phases of this controversy are discussed in Chapter III.

conducting of elections absolute freedom was to be allowed the individual employees to express their wills. It was not legal for the carrier to restrain the employees from voting for an organization as representative, neither was it legal for a labor organization to restrain the employees from voting for an individual to represent them.

Additional light was thrown upon the problem of employee representation by the case of the Buffalo, Rochester and Pittsburgh Railway Company v. the foremen in the maintenance of way department.[35] This was the question asked: "Shall foremen in the maintenance of way department be permitted to have an agreement separate from other employees of that department?"

Decision was handed down November 19, 1921. About eighteen months before this certain foremen approached the carrier and asked for a separate agreement, the request being denied at the time. But after Decision No. 119 was promulgated the carrier announced that the foremen could draw up a separate agreement "provided they could show the proper proportion of men in their craft or class." The maintenance of way organization which had been representing these foremen was notified also. Each group thereupon circulated petitions, but it appeared that some names were upon the petitions of both parties. As a result the carrier decided to have an independent secret ballot which was prepared and approved by representatives of both employee organizations. In the election the foremen's organization received a majority of the votes and, thereupon, the other organization appealed to the Labor Board alleging that the road had used undue influence.

The Board judged that the road had complied with Decision No. 119, therefore the election was bona fide and final "insofar as agreement negotiations pursuant to Decision No. 119 are concerned for this class of employees."[36]

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35. Decision No. 412, 1921.
36. Idem.

It appears, then, that in the matter of agreements the Board desired that the employees and managements exert every reasonable effort to formulate them themselves, in conference, and peaceably. In case the conference was not fully successful only the points undecided were to be referred to the Board and if the difficulty in reaching agreement was due to the deliberate policy of obstinacy the Board would rule accordingly as to the extension of the life of the old national agreement, shortening it or lengthening it, according to the group responsible for the delay. Agreements reached were to be in harmony with the considerations of employee welfare and economical and satisfactory operation of the railroad. When difficulty in selecting proper employee representation was experienced the Board ruled that elections were to be held according to law and employees were not to be limited, in their candidates, to either organizations or individuals, employees of the particular road interested, or outsiders. When necessary the Board provided a sample ballot for the use of the parties to the dispute.

In deciding matters concerning agreements the Railroad Labor Board acted as an arbitrator in railway labor disputes, but inasmuch as the decisions could be observed or ignored practically at the will of the interested parties the status of that body became largely that of an advisory commission with large powers of investigation. This phase of the problem will be developed more fully in a following chapter.

D. THE SETTLEMENT OF WAGE QUESTIONS

Wage problems are many-sided and on the railroads present no exception. The Board was called upon to consider the question of wages when roads were in "normal" condition, when they were in the hands of receivers or about to fall into the control of the court, and when the roads were not doing certain work pertaining to their duties them-

selves but were contracting it out. What principles guided the Board's action in these various cases?

(a) **When the Roads are Normal**—The term "normal" is subject to considerable difference in meaning, but it is used here to differentiate these roads from those in receivership or verging thereon. It is in no sense, as used here, a measured distinction, being merely a device helpful to a more detailed consideration of wage settlements.

Shortly after the Board began functioning it authorized increases which approximated 22 per cent above those authorized by the United States Railroad Administration. In 1921 the Board ordered a reduction of about 12 per cent on all roads and on all classes of labor. In the summer of 1922 there were further reductions. In October, 1922, increases were ordered for the maintenance of way and shop laborers; further increases were granted in 1923. The clerical and station forces also received increases. Negotiations between other groups, such as train service employees, rsulted in higher rates of pay. Wages dropped somewhat in 1924, but showed a tendency to rise in 1925.

On July 20, 1920 the first basic wage decision was made.[37] The controversy out of which it arose had its origin in this question: "What constitutes a just and reasonable wage?" In this instance the dispute was occasioned by the facts given in the history below.

About 93% of the railroad mileage of the country was taken over by the President on December 28, 1917, and operated under Federal control until March 1, 1920, when, under the provisions of the Transportation Act, 1920, control was again vested in the owners. Meanwhile, owing to war conditions the cost of living advanced. The Director General of Railroads on May 25, 1918, issued General Order No. 27 raising the pay of railroad employees whose wages were less than $250 per month. The lowest paid employees received increases amounting, in some instances,

37. Decision No. 2, 1920.

to 43%. The larger salaries were increased less, the increases graduating down to zero.

The cost of living continued to rise, however, and the wage, increased though it was, seemed to the employees to be inadequate. As early as January, 1919, railroad workers were presenting requests for increases which, if granted, would have totaled $800,000,000 per year. Pending discussion and investigation these demands were not granted, and seven months later the President urged the employees to let patriotic considerations sway them while the matter continued under advisement.[38]

In February, 1920, the railroad men began to renew their pressure for they noticed that prices continued to rise and nothing definite had yet been done concerning their requests. The passage of the Transportation Act, February 28, 1920, made the subject one for conference between representatives of the carriers and the representatives of the employees, and such a conference was held from March 10, to April 1, 1920. Complete failure to agree was the result, the dispute finally coming before the Railroad Labor Board for consideration and settlement. Because of the great amount of time which had elapsed between the original presentation of the petition and the final decision of the Board (July 20, 1920) the judgment was made retroactive to May 1, 1920. It affected approximately 2,000,000 men in more than 1000 classifications.[39]

This decision affords an opportunity to examine the Board's use and interpretation of the rules laid down for its guidance in the Transportation Act. "The Board has been unable to find any formula which, applied to fact, would work out a just and reasonable wage for the many thousands of positions involved in this dispute." Conclusions must necessarily be a matter of "estimate and judgment"; this estimate and judgment must be formed in view of all conditions—in which view individuals will differ ac-

38. Decision No. 2, 1920.
39. Idem.

cordingly as they have information or lack of it, or as "their interest, situation, and bias may influence them." If any should criticize this decision, thinking that the rates granted to the employees were too low, "they should consider the increased burdens these rates will place on their fellow-countrymen, many of whom are less favorably situated" than the railroad workman.[40]

These remarks of the Board reveal the humility of the Board at the time of its establishment. The problems confronting it had to be solved; and when the solution was proclaimed reasons therefore would be presented. Such reasons might have been the actual links out of which the decision was really forged; but the proportions in which the various ingredients were used would depend somewhat on what the Board called "estimate and judgment," information, interest, situation, bias. Sometimes, in decisions handed down by arbiters, it may be questioned whether the reasons stated were principles used in reaching the decision at all; their statement may be merely the result of rationalizing after the event. Perhaps coercive bargaining power stampedes a board into giving a decision favoring the workers. What principles will be stated in the decision? If there has been an increase in the cost of living perhaps that will be given. When a decision is based upon changes in the cost of living it does not follow that a careful study of these changes has been made by the arbitration board making the decision. A statistician of one of the roads party to a wage decision of the Labor Board showed the writer a large sheaf of tables and charts, part of the road's presentation, which, he claimed were never looked at by the Board. In the office of the Labor Board the writer was told of one member of the Board who was notoriously adverse to the detailed work necessitated by the actual study of problems brought to that body's attention; but who had his photograph taken with his desk piled high with docu-

40. Idem.

ments and papers, himself lost in the midst of them, engaged in the eager search for truth!

In reaching Decision No. 2, the Board claimed to have given due consideration to the hazards of the employment, the training, responsibility, and skill required. Regarding the character and regularity of the employment the Board thought that the railroad work was, in general, more desirable in these respects than work outside. The need for prompt action kept the Labor Board from making a painstaking study of the alleged inequalities due to previous "adjustments," but nevertheless, some thought was given to them. Great difficulty was admitted in considering the scale of wages paid for similar kinds of work in other industries and the relation between kinds of work in other industries and the relation between wages and the cost of livng, because such facts differed so greatly in different parts of the country. It was thought that the cost of living had increased about 100% since 1914 but that, in many instances, the employees had received increases greater than that figure. Speaking of the railroad wage qustion as a whole the Board said: "The standardization of pay for railroad employees had proceeded so far and possesses such advantages that it is deemed inexpedient and impracticable to establish new variations based on these varying conditions."

Consequently, in its study of prices and wage conditions the Board did not intend to wipe out any differences in rates due to differences in local conditions nor to eliminate those differences existing between different classes of employees. The problem was: "What would constitute a just and reasonable wage for the hundreds of classifications of railroad employees." So the Board said: "It is believed that this method accomplished THAT APPROXIMATION OF JUSTICE WHICH IS PRACTICABLE IN HUMAN AFFAIRS."[41]

It was attempted to fix wages such as would provide

41. Emphasis mine. Quotation from Decision No. 2, 1920.

"a decent standard of living and secure for the children of the wage earners opportunity for education." However, says the report, the Board always kept in mind the knowledge that any increases in cost of operation must be borne by the great mass of the people. Adequate transportation is desired by the people, and a part of such adequacy is a satisfied personnel. Recognizing that railway wages were "substantially below" those in other industries, increases were authorized based upon rates previously existing under the authority of the United States Railroad Administration. It was estimated by the Board that these authorized increases would aggregate approximately $600,000,000 per annum.[42]

In this decision the Board, according to its statement included among the premises upon which it relied in reaching a conclusion the principle of the living wage and the principle that changes in the cost of living must be taken into consideration. Another principle considered was the effect of wage changes on the cost of the service, a matter of serious import, for the rates which determine the ability of the carrier to pay were not under the control of the Labor Board but of the Interstate Commerce Commission. To the extent that the Board considered the hazards of the industry, the amount of training necessary, the regularity and character of the employment, and the conditions in other industries, it was recognizing the principle that arbitration boards should endeavor to fix their wage awards as near the market rate as possible.

The award made in this decision (No. 2) was not a permanent one. The Transportation Act did not authorize a permanent award and, besides, the award was based upon conditions existing at the time. The parties to the controversy (said the Board) accepted the decision in good faith. The increase in rates granted subsequently to the carriers by the Interstate Commerce Commission was to

42. Idem.

some extent based on the rise in wages granted in this decision of the Board.[43]

Lowered costs of living, the great changes in the financial and industrial conditions of the country, brought the wage question to the fore again. The carriers conferred with their employees in regard to reductions in wages but were unable to reach an agreement. The matter was brought officially to the attention of the Board by the carriers. In Decision No. 147 growing out of this controversy the Board authorized a decrease in wages.

"A living wage" and "efficient operation of the carriers" were still recognized as principles; but the deciding factors in this case were decreased cost of living coupled with the general decrease in wages in other industries.

Labor did not take kindly to this decision, feeling that the award was largely the result of adverse propaganda. W. N. Doak, Vice President of the Brotherhood of Railroad Trainmen said:

> The public mind was unduly and improperly preyed upon by a system of publicity and propaganda to such an extent that substantial justice was withdrawn from railroad employees and an undesirable and unfair estimate of the true situation arose. . . .This naturally had a tendency toward creating a fear in the minds of the employees that the governmental agency was being unduly influenced by the false propaganda being freely circulated over the country.[44]

Further reductions were authorized in the decisions of July, 1922. This decision pertained to specific classes and contained, as usual, a reference to the principles the Board had in mind in reaching a decision; but there was a dissenting opinion which emphasized the following points:[45]

1. The rates of pay established under this decision as the basic minimum rates of the transportation industry

43. Authority for these statements is to be found in the Board's preface to Decision 147, 1921.
44. Article is "The Railroad Problem," p 306.
45. Decision No. 1028, 1922.

would merely perpetuate the low level of purchasing power possessed by this large class of workers in pre-war years.

2. The rates of pay established under this decision would mean annual earnings far below any minimum standard of subsistence which has been formulated, even below those of most conservative employer groups.

3. The rates of pay established under this decision were not based upon the human needs of the hundreds of thousands of families involved. They were insufficient to provide these families with the absolute essentials. The rates were, therefore, inadequate.

4. The pre-war standard perpetuated by this decision was the product of inequitable wage bargains.

These points emphasized in the minority report (i. e. the report of the representatives of labor on the Board) bring out the shift in the employees' attack on the wage problem for in the early decisions the emphasis was upon the increased cost of living but now, with living costs falling, another ground for argument is noticed when needed—the statement that the Board's decisions have not provided a living wage.

Decisions Nos. 1036 and 1074 brought out similar arguments.[46] The Board refused to accept budgets as a basis for decision, considering them "highly theoretical." However, the Board did recognize the difference in living costs in towns and cities, owing to size and situation, and made its award accordingly. Maintenance of way men, for example, having headquarters in centers where the cost of living was comparatively high, received higher wages than those having headquarters somewhere else. Part of the utterance of the Board, showing its attitude toward labor, may be given here.[47]

It should be said that the Labor Board has never adopted the theory that human labor is a commodity to be bought and sold upon the market and, consequently, to be reduced to starvation wages dur-

46. Decisions, Vol. III, 1923.
47. See Decision 1074, 1922.

ing periods of depression and unemployment. On the other hand, it is idle to contend that labor can be completely freed from the economic laws which likewise affect the earnings of capital.

It might well be asked, can labor be freed from these laws at all?

In summary, it may be said that the Board claimed to base its decisions upon the following principles: 1. The living wage and changes in the cost of living. 2. The necessity for efficient operation of the carrier. 3. The condition of the market, as shown in: (a) the supply of labor—influenced by hazards, training, regularity of employment, and so forth; (b) the demand for labor, as shown by the needs of the railroads and wages in similar industries.

(b) Roads Other Than Normal—that is, roads already in the hands of the receiver or verging thereon have their own wage problems. How did the Board deal with these?

After wage rates had been increased by Decision No. 2 the railroads appeared before the Interstate Commerce Commission and asked for increased rates. The Commission authorized such an increase to the appealing group amounting to an increase in freight and passenger rates of 40 per cent. The Commission explained its action by pointing out that approximately one-third of this increase was authorized for the purpose of providing revenues to meet the wage determined by the Board to be just and reasonable.[48]

One of the carriers benefiting by this increase was the Missouri and North Arkansas Railroad. This Company carried out the provisions of Decision No. 2 until February 1, 1921. On December 29, 1920, the receiver of this road notified the labor organizations that financial exigencies made it necessary to adjust wages downward by a total of $25,000 per month. He requested that the representatives of the employees meet him January 20, 1921, in order to

48. Ex-parte No. 74, pp 234-246

agree that such wage reductions as were necessary at that time were proper, but in the conference no agreement was reached. The employees made a counter-proposal, but it was rejected. Notice was given by the receiver that wages would be reduced February 1 to the basis of April 30, 1920. On January 31, 1921, the employees appealed to the Labor Board on the ground that the contemplated action of the receiver, prior to a hearing and decision of the Board, constituted a violation of Decision No. 2. The Board thereupon ordered that the status quo be maintained until such time as the Board made decision and that the parties confer further. Another hearing was to be held February 15th. On February 9th the receiver announced that he would not rescind the order reducing wages, giving as his reason the financial inability of the carrier to pay the existing rates. At the hearing of the Board the receiver submitted a statement of the financial condition of the road and **for the first time** spoke of the unreasonableness of the current wage rates in the light of existing living costs.

In its decision on this occasion[49], the Board found itself unable to consider the inability of the carrier to pay, for no conference had been held regarding just and reasonable wages, and the law required such conference. There had been a conference of a sort; but the nature of it did not represent a compliance with section 301 of the Transportation Act. The Board said that it would not consider the dispute further until such conferences had been held. However, due to the Board's failure to act in the premises prior to February 1, the effective date of the reduction order issued by the receiver, it felt that it would be unjust to proceed against the carrier as a violator of a decision as provided in section 301 of the Transportation Act. The Board ordered the parties to confer on the subject of just and reasonable wages, the employees to accept the decreased pay under protest meanwhile, and, if the

49. Decision No. 90, 1921.

carrier should refuse to confer he would then be cited as a violator of the Transportation Act and the decisions of the Labor Board.

In this decision the Board held, in statement and implication, that the alleged inability of a carrier to pay could not be made the basis of a wage decision by the Board until the necessary conferences between the carrier and its mployees had been held with reference to the justness and reasonableness of the wages paid, or to be paid. The decision was not that the carrier should pay a wage different from the one suggested by itself, but that the steps taken in the matter had not been made in accordance with the law. That the road was in the hands of a receiver apparently made no difference to the Board.

Ability of a carrier to pay was also a factor in the controversy between the Atlanta, Birmingham and Atlantic Railway and its employee organizations. Two decisions were made in this dispute; when the second was made the road was in the hands of a receiver.[50]

This carrier obeyed Decision No. 2 up to and including January, 1921. On December 29, 1920, pursuant to the old Federal control agreement, thirty days notice was given to its employees of a reduction in wages equivalent to one-half the sum of all increases effective since December 31, 1917. At a conference held December 29, 1920, officers of the carrier presented evidence to show that this road was financially unable to pay the rates determined by Decision No. 2 to be just and reasonable, and that the road had failed to earn operating expenses. A later conference was held (January 11, 1921) at which the carrier agreed to submit the dispute to the Labor Board but continued to insist, however, that the new rates must go into effect February 1st. At the several hearings held by the Board the carrier endeavored to show its inability to pay, and pointed out the value of the road to the community served. On February 10, the

50. The matter first received official notice in Decision No. 89; later in Decision No. 121, 1921.

Board asked the carrier for information concerning the cost of living. Four days later the carrier, for the first time, claimed that living costs had been reduced and that, therefore, the wages fixed by Decision No. 2 were no longer just and reasonable. This, as the Labor Board observed, "was a reason other than its alleged financial inability to pay such wages."

All of these facts were introductory to Decision No. 89 in which the Board pointed out that no conference had been held as required by law on the justness and reasonableness of the existing wages, saying,

> It is the decision of this Board that it is without jurisdiction to determine the present dispute until section 301 has been complied with by conference of the parties, the subject matter of such conference shall be whether the present wages are just and reasonable.51

Further consideration by the Board was postponed until such time as the parties "have refused to enter into conference on said question."

In compliance with a resolution of the Railroad Labor Board the carrier rescinded its original order effective February 1. But March 12 the Board had reason to believe the carrier had violated Decision No. 2 by reducing the wages in the amounts originally announced. The Board, thereupon, named March 21, 1921, as the date to hear and decide this question.

It was brought out in this hearing that shortly after the Board had issued Decision No. 89 remanding the dispute to the interested parties for further conference, and after the carrier had been instructed to recall its order reducing wages, a creditor of the carrier prayed for the appointment of a receiver. (February 25, 1921). At this juncture the president of the railroad resigned. The application for the appointment of a receiver was granted by the court, and the ex-president of the road received the appointment. On February 28 the receiver issued circular No. 3, signed by a

51. Decision No. 89, 1921.

Federal judge, ordering the aforementioned decrease and, thereupon, the employees requested a conference which request was denied by the receiver. A vote taken in January (in view of the February 1 order) empowered a committee to "withdraw the employees from the service" in case unsatisfactory terms were secured. The committee exercised this power March 5, 1921. The report of the Board states that "there is no doubt that the circular effective March 1 . . . put rates of wages into effect different from and substantially less than those determined to be just and reasonable by this Board in Decision No. 2."

The receiver set up some interesting defences, claiming:[52]

1. No order has been passed by the Labor Board determining what shall constitute just and reasonable wages for this receiver's employees. He did not become a carrier until his appointment as receiver February 25, 1921. Consequently, he was not a party to Decision No. 2, hence is not bound thereby.

2. Wages fixed by the receiver were fixed by order of the court of which he, as receiver, was an officer at the time of issuing same.

3. The Labor Board decided on February 1, 1921, that it was without jurisdiction.

4. That the decision of the Labor Board on Februay 21, 1921, holding that it was without jurisdiction until section 301 had been complied with by a conference of which the subject matter should be whether the present wages are just and reasonable, amounted to a ruling that the Labor Board is without jurisdiction to consider the ability of the carrier to pay. It is then urged that if the Transportation Act confers upon the Labor Board the right to fix wages for a carrier that is not earning operating expenses without requiring the Board to consider the financial ability of the carrier to earn the money with which to pay such wage, the said act is repugnant to the fifth amendment to the Federal Constitution in that it deprives a carrier of its property without due process of law and is therefore void; and,

52. See Decision No. 121, 1921.

further, that any decision which requires a carrier to pay wages which it cannot earn is void.

5. The Atlanta, Birmingham and Atlantic Railway Co., was not a party to Decision No. 2 because no conference had been held between representatives of the carrier and its employees with reference to the reasonableness and justness of the wages then in effect.

6. This carrier was not a party to Decision No. 2 because of not having been served with a notice to appear at the hearings and because of not having been represented at said hearings by an authorized represntative.

Some interesting propositions were raised in the receiver's defence. How did the Board handle them?

In the opinion of the Board the receiver was bound, because the appointment of a receiver does not alter the status of a property and the various laws, such as the Adamson, and the rulings of the Interstate Commerce Commission still apply. The court order mentioned in the communication of the receiver was beyond the jurisdiction of the district court (Title III, sections 301 and 307) for the Transportation Act puts the duty of wage determination on the Railroad Labor Board. "The order of the court was in no sense a review of the Board's decision," but the court "has in effect set aside Decision No. 2 so far as it applied to this carrier without proceeding in the manner provided by law for judicial review of the findings of administrative tribunals."

It was the claim of the receiver that the Board, in remanding the case in Decision No. 89, had stated its lack of jurisdiction. In answer the Board claimed that the final paragraph of said decision showed that jurisdiction had been retained; for the Board had postponed consideration of the dispute only until such time as the parties "have refused to enter into conference on said question." The fifth amendment was not violated, for, had there been a conference as the Board suggested, in all probability a compromise would have resulted and the property would have been reduced less than it was through labor troubles. "Fur-

thermore, by this procedure the law would have been complied with." The carrier was, in fact, represented and a party to the conference which resulted in Decision No. 2. The employees did wrong to go on strike; instead they should have insisted that the Labor Board put the wage order into effect. However, certain complications had arisen. The Board thought it inadvisable to request the court to recall its order; but it did ask the court to direct the receiver to confer with the petitioners with reference to wages according to section 307 of the Transportation Act.[53] To prevent conflict in jurisdiction the Labor Board decided "to take no further action until the court shall approve or deny this Board's requests therein."[54]

In this decision this principle stood out: A carrier, party to a decision, regardless of the ability or inability to pay, could not rightfully change the wage rates set by a decision without first reaching an agreement, in conference, with the employees interested. To do otherwise was to violate the decision of the Board and the Transportation Act. The decision did not speak of the merits of a carrier's ability to pay as a principle in the adjudication of wage disputes.

The circumstances of this case reveal the confusion caused by the Board's insistence on conference. The purpose of the Board's insistence was to secure the utmost effort on the part of the disputants to adjust the controversy before bringing it to the attention of the governmental tribunal but, in this case, its remarks upon the subject were sufficiently ambiguous to be used as an excuse for unimpeded action on the part of the carrier.

Ability of the carrier to pay was, however, considered by the Board in the aftermath of the Missouri and North Arkansas dispute referred to above. (Decision No. 90). The Board at that time had suggested that the striking employees return to work and accept the wage rate of the receiver under protest. The shop crafts expressed a willing-

53. Decision No. 121, 1921.
54. Idem.

nes to return but empoyees in other departments refused to return while conditions were so uncertain. The receiver was able to recruit a new group of employees and he notified the Labor Board that he was willing to continue operation at the receiver's rates. However, in July, because of inability to meet operating expenses service had to be discontinued.

In October he notified representatives of the employee organizations of his desire to resume operations under certain conditions and requested conferences as to just and reasonable wages. Agreement was not reached in conference and the carrier, thereupon, appealed to the Board. He asked for rates 25% lower than those authorized by Decision No. 147, itself a reduction order. It was claimed that a reduction of $310,000 annually was necessary to prevent the road from being scrapped. To tide the road over, arrangements had been made for a government loan.

This road served approximately 145,000 people as exclusive carrier in a community of 500,000 and these people would suffer considerable injury if the service of the road was discontinued. The road had been in the hands of the receiver since 1912, and had not paid any return on the investment since that date. The receiver agreed, if his proposal was granted, that no return should be paid upon the investment until the government loan had been paid and the wages restored to the standard scale.

The Board accepted the proposal of the receiver as a basis for its decision No. 724. The only principle involved at the time was the ability of the carrier to pay. With the decision went the moral presumption that when the carrier was able to pay better wages, it would do so.[55]

(c) When Work had been "Contracted Out" by the Carrier. Primarily two questions were raised when work was being contracted out by the carrier: Did the Board have jurisdiction over the positions which were under contract?

55. Decision No. 724, 1922.

Might the Board set rates of pay higher than those paid by the carrier for work done under contract?

The St. Louis Southwestern Railway Company was a party to Decision No. 2 and obeyed its provisions up to and including November 20, 1920. It had its rates raised by the Interstate Commerce Commission on the basis of Ex-Parte No. 74, cited above. The employees of this road were obedient, also, to the mandate of the Board. But a difficulty arose, and it came about in this way:[56]

Without prior conference with the maintenance of way Brotherhood certain positions within its classification were abolished and men hired, subsequently, to perform the same services through a system of competitive bidding—the men willing to do the work for the least pay receiving the jobs. But the wages of track foremen and track laborers were reduced without even this formality.

In the former instance the carrier contended that it had not violated Decision No. 2 as the positions in question no longer existed and that, in any case, the men now employed were individual contractors. The management admitted that it had held no conference with the representatives of the maintenance of way men, pleading in extenuation that under Federal control this organization was not actually recognized in the Southwest.

Regarding this statement that the complainant organization ,the United Brotherhood, was not actually recognized under Federal control the Board pointed out that the Director General had entered into an agreement with this organization on November 22, 1919, and that this agreement was in effect down to the termination of Federal control. Concerning the other arguments of the carrier the Board said: the argument of the carrier was fallacious in that the positions alleged to have been abolished had been abolished in name only for "these positions in general adhere to the

56. Decision No. 121, 1921. See also Nos. 120, 257, 328, 1075, 1079, 1212, 1215, 1218, 1219, 1222, 1226, 1230, 1231, 1254, 1256, 1687, 1889, 2207, 2313, 2314, 2485, 2486, 2497.

service of a common carrier and are necessary to that service. This carrier considered them necessary for after the abolition it re-established them by individual and special contracts." Another fallacy was hidden in the argument of the carrier who claimed that the men were not under the jurisdiction of Decision No. 2 because they were individual contractors. "There is in every case," said the Board, "a contract imposing an obligation of service on the one side and of compensation on the other . . . As to whether certain men are in fact employees of the carriers depends upon the character of their duties and not on the form of the contract employed."[57]

According to its decision the Board claimed to have jurisdiction over the labor disputes on the railroads even when the work in question was done under contract; provided the duties of the workers involved were such as "in general adhere to the service of a common carrier."

Contract, as a means of escaping the jurisdiction of the Board, appears to have been used by the Indiana Harbor Belt Railroad Company, among others.[58] This Company entered into a contract with the Burnham Car Repair Company authorizing the latter to do the work formerly done by the carrier in its own shops. The carrier agreed to furnish the necessary shops, so far as they possessed them, and tools and materials. There was to be a piece-work schedule of pay for labor and the contractor was to receive 5% of the payroll. The employees were dissatisfied with this arrangement, but when they attempted to confer with the carrier they where told that it could not confer with them as it did not have a car repair department; so the employees brought the matter to the attention of the Railroad Labor Board. The work which the carrier intended to have done under contract was ordinarily done by these classes of employees: 1. the six shop crafts; 2. maintenance of way employees; 3. certain employees included in the clerks' or-

57. Decision No. 121, 1921.
58. Decision No. 982, 1922.

ganization; 4. the firemen and oilers; 5. the hostlers; 6. the signal department employees.

It was the contention of the representatives of the employees that: 1. the contracts were not made in good faith; 2. even if they were made in good faith they violated the Transportation Act and were in conflict with the decisions of the Board. In admitting the validity of the second contention of the employees the Board said:

> The Transportation Act was not enacted primarily for the protection of the rights of either carrier or employee, except insofar as such protection was involved in the paramount purpose of the act; that is, to insure to the public as far as posible, efficient and uninterrupted railway transportation by protecting the people from the loss and suffering incident to the interruption of traffic growing out of controversies between the carriers and the employees who do the work.59.
>
> A strike by the employees of a contractor or contractor-agent of a carrier would as effectively result in an interruption to traffic as if the men were direct employees of the carrier.60

Commenting on the facts of the case, the Board continued:

> The carrier's own shops, along its own lines are maintaining the carrier's car equipment exactly as they did before these contracts were made. Very largely, the carrier's same foremen and inspectors are in charge and its same careful supervision is being exercised. The carrier is furnishing all the necessary material from its own stores and supply houses as it did before. The employees of the contractor are riding the carrier's shop train gratis from their home to their work just as they did before, except that no passes are issued to them for fear of violating the law. When a wreck occurs anywhere on the property the employees of the contractor go out and look after it. The employees of the contractor are required to familiarize themselves with the operating rules of the railroad pertaining to safety.

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59. Decisions, Vol. III, p 339.
60. Decisions, Vol. III, p 338.

The carrier's tools, machinery, and equipment are all being used in the operation and the contractor has none of his own. The contractor has no leasehold on the plant or shops of the carrier. The carrier is carrying accident insurance on the contractor's employees. The carrier's tools, machinery, and equipment are all being used in the operation and the contractor has none of his own. The contractor has no leasehold on the plant or shops of the carrier. The carrier says it is free to do any of its work anywhere else it sees fit. On 60 days' notice, either party can terminate the contract. The contractor does not even have any control over the wages paid the employees. The contract contains the carrier's readymade piecework schedule which the contractor must use.

There need be no misunderstanding of this situation. The contractor performs only one useful function in this operation—he is the medium or channel through which the piecework system was substituted for the lawfully established wage scale. The contractor's compensation for this is 5 per cent of the amount of the payroll, and the rate of pay is carefully limited by the piecework provision in the contract. The contractor takes absolutely no risk.[61]

Insofar as the contracts in question "purported or were construed by the carrier" to remove the employees from the application of the Transportation Act and the decisions of the Board they were in violation of that Act and those decisions, said the Board. Work which originally adhered to the railroad service was not removed from the jurisdiction of the Board by contract.

That the Labor Board did not change its attitude toward contract work is shown by a later decision rendered in connection with a dispute between the Brotherhood of Railway and Steamship Clerks, etc., and the Lehigh Valley Railroad. In this controversy the employees protested the contracting by the carrier of freight-handling on its piers in New York and Brooklyn. The Board declared the contract illegal and ordered that the employees suffering a reduction in wages under this contract should be reimbursed for their losses.[62]

61. See Decision No. 982, 1922.
62. Decision 2080, January, 1924.

Some contract work, however, was regarded by the Board as bona fide. The Southern Pacific let the contract for the operation of a gravel pit which it owned. The train and engine crews handling transportation work in connection with the operation of the pits were considered to be in the employ of the contractor and not subject to rules relative to seniority and wage rates which applied to such employees in the service of the railroad. The labor organizations asked that the workers employed on the trains used in such service be chosen from seniority lists of the road and paid the rates prevailing on the road's property for such work.

In the opinion of the Board the evidence showed that the contract in this case was entered into in good faith and not merely for the purpose of evading the jurisdiction of the Board. The contractor was previously engaged in the gravel business and had not been on the carrier's payroll. Other gravel pits, owned by the carrier, had been operated by contractors, in some instances for 12 or more years.

Another problem of contract work with which the Board had to deal was one involving a carrier which contracted out certain work after receiving a strike ultimatum from its employees. The case was brought to the attention of the Board by the employees' organization which asked: Shall the conditions of the 1923 season remain in effect for the 1924 season unless changed by mutual agreement or decision of the Railroad Labor Board?[63]

The employees had demanded 64 cents per hour day work and 65 cents per hour night work. The carrier declined to accede to this demand on the ground that 53½ cents per hour was the highest rate payable under the award of the Labor Board, and was a rate that a competing road was paying for similar service. Thereupon the men took a strike vote, refusing to work unless their demands were granted. The road then said that if the men did not accept the proposal of the management the work would be con-

63. Decision 2508, July, 1924

tracted out. Subsequently the road did contract out the work at a rate of 50 cents per hour for day work and 51½ cents per hour for night work. At this juncture the men appealed to the Board and claimed that the action of the carrier violated the agreement of 1923 and asked that they be reimbursed for wages lost under this action.

Similar coercive tactics had been used by the employees in 1923 to force the carrier to pay 6 cents per hour more than the competitive rate; therefore, the Board decided that the carrier was justified in contracting out work when these same tactics were tried again. The Board decided, further, that the men, by refusing to report for service, automatically severed themselves from the same; therefore their request for reinstatement with compensation for wage loss sustained was denied.

On the surface it might appear that the request of the men was denied in this case because they had left the service (were strikers) rather than because the Board condoned contract work. Additional light is shed on the problem by the dispute of the employees with the Delaware, Lackawanna and Western Railroad.[64]

This carrier had contracted with men in various cities to handle its freight locally. Later this contracting system was discontinued by the road because of the Board's decision that freight-house employees of contractors were under its jurisdiction.[65] When the road resumed operation of its freight house it retained the contractor's employees and ignored the employees who were in its service at the time the freight house service was put under contract. It claimed that since the employees had struck at the time the work was contracted out they had "severed their connection with the carrier." The Board, in this decision (No. 3905) directed the carrier "to take up with any employee who may have suspended work the matter of reinstatement upon

64. Decision 3905, November, 1925.
65. Decision 1279, 1922.

the application of the interested employee or his representative."[66]

The carrier takes the position that the men cannot present their grievance to the Labor Board because they have refused to work for the so-called contractors under the diminished wages and mutilated working rules imposed. These contracts were merely subterfuges by which the carrier arbitrarily changed the wages and working conditions of these employees without compliance with the provisions of the law. The employees sought conferences with the carrier but they were denied this right.

The carrier had taken steps which purported to close its shops, transfer its employees to a new employer, remove them from the application of the Transportation Act, 1920, and obliterate their wage and rule agreements. This was equivalent to a lockout. This was done under a claim of legal right, and the employees apparently acquiesced in the carrier's view of the matter that the shops had been closed and that they had been thrown out of employment. The Labor Board cannot afford to strain at a technicality and say that these men, with their entire status as railway employees apparently destroyed by a deliberate act of the carrier, should not be heard to complain before the Board because they stopped work under the contractor.

The rule, then, for work contracted out was: where such work had been considered an integral part of the carrier's responsibility and its successful completion had been regarded as essential to the continuous and uninterrupted operation of the carrier, the men doing such work remained under the jurisdiction of the Labor Board. It was still the Board's duty as regarded these positions to see that transportation was not interrupted, and that wages, rules, and working conditions were just and reasonable. Consequently, all principles previously adduced applied to contract work.[67]

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66. For a fuller discussion, see Decision 1361, 1922.
67. Transportation Act, Title III, section 307-b.

(d) Principles According to Which the Wage Question in General Was Decided.

In the Transportation Act, 1920, Congress directed that the Labor Board, in determining the justness and reasonableness of wages, salaries, and working conditions should, so far as possible, take into consideration among other relevant circumstances:[68]

1. The scale of wages paid for similar kinds of work in other industries:
2. The relation between wages and cost of living.
3. The hazards of the employment.
4. The training and skill required.
5. The degree of responsibility.
6. The character and regularity of the employment.
7. Inequalities of increases in wages or of treatment, the result of previous wage orders or adjustments.

Three major factors stood out: competitive wages, the cost of living, certain differentials (merited and unmerited). Unmerited differentials might be the result of bad and unequal previous adjustments; these, the Board might, as far as possible, rectify.The Board, in establishing wage rates, was instructed to see that such rates were tenable in the light of the cost of living, competitive wage conditions, and the necessary differentials.

In its wage decisions the Board claimed to be persuaded by these conditions. Its claim was challenged, at various times, by dissenting members of the Board and others; in reducing wages, for example, usually the representatives of labor did the dissenting. They urged, on such occasions, that the Board was not giving proper consideration to the principle of the living wage and changes in living costs. An example will make clear what is meant.

1. The rates of pay established under this decision as the basic minimum rates of the transportation industry will merely perpetuate

68. Idem.

the low level of purchasing power possessed by this large class of workers in pre-war years. . . .

2. The rates of pay established under this decision will mean annual earnings far below any minimum standard of subsistence which has been formulated, even below those of most conservative employer groups.

3. The rates of pay established under this decision are not based upon the human needs of the hundreds of thousands of families involved. They are insufficient to provide these families with the absolute necessities. . . .

4. The pre-war standard perpetuated by this decision was the product of inequitable wage bargains. It was considerably below the level recognized at that time as necessary for the maintenance of health and energy.69

In dealing with the so-called "normal" roads the Board awarded wages which it claimed would enable the worker to maintain his family in a standard of decency. According to the Board the rate allowed was considerably higher than that paid for similar kinds of work in other industries, but justifiably so because of the conditions of hazard and responsibility obtaining in the transportation service. Within the transportation industry differentials were permitted because of differences in conditions of employment such as hazards, training, and responsibility. A lesser rate was allowed, in some instances, to those who were unmarried or living at home with parents. The Board did not consider labor a commodity in the ordinary sense of the term, but felt that labor could not altogether escape the economic consequences of being bought and sold. The ability or inability of a carrier to pay certain rates was not deemed the first consideration in settling wage disputes; but it was held to be one of the considerations.

Alleging "inability to pay" the Association of Railway Executives asked the Board in January, 1921, to immediately reduce the wages of common laborers. In denying this request the Board said:

69. Decisions, Vol. III, pp 400, 401.

> The duty is imposed upon this Board by the transportation act of determining just and reasonable wages and working conditions for employees of carriers. All questions involving the expense of operation or necessities of railroads and the amount of money necessary to secure the successful operation thereof are under the jurisdiction, not of this Board, but of the Interstate Commerce Commission.[70]

And, in a dissenting opinion, Mr. A. O. Wharton, a labor member of the Board, said: "Numerous opinions of courts and boards of arbitration specifically excluding 'financial ability' of the carrier from consideration as a relevant circumstance in wage fixing are filed with this Board."[71]

The Board was forced to change its attitude in this matter somewhat when the courts decided that they had final jurisdiction in questions affecting property in the hands of receivers. When the courts considered wage problems the ability of the carrier to pay received major emphasis. This principle is more commonly invoked in wage reductions than in wage increases.[72] Perhaps it may be assumed that, ordinarily, managements will be as zealous as receivers in the preservation of property over which they have charge. In any case, they had final power, as had the receivers, to decide whether or not they would obey the orders of the Board.[73]

When roads were verging on receivership or were already in the hands of receivers the Board frequently felt itself compelled to order a maintenance of the status quo because the conferences, necessary under the law, had not been held. But it recognized that there were instances when the paramount interest was to keep the road going, although such continuance of operation would be the result of a loose interpretation of the wages in other industries and the cost of living. Any other attitude on the part of

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70. Labor Board Decisions, o. II, p 316.
71. Idem.
72. Herbert Feis, "Principles of Wage Settlement," p 249.
73. See next chapter for discussion of the powers of the Board.

the Board would have resulted in the scrapping of the road —provided that such attitude of the Board was sustained by the courts.[74]

Contract work, so far as it involved positions essential to railroad operation, was considered under the jurisdiction of the Board. Rates paid under contract were to be just and reasonable, as stipulated in the Transportation Act, 1920.

A large element in wage settlement, which will not be analysed here, is bargaining power. The Board, though professing not to be influenced thereby,[75] was, nevertheless, aware that its decisions might or might not be accepted, at the discretion of either party. And, even though the disputants had agreed to submit to arbitration and abide by the decision, a judgment regarded as unfavorable would probably result, in the future, in an unwillingness to go before the arbitration tribunal.

In this chapter the attitude of the Board, when confronted with different aspects of the railroad labor problem, was considered. It was pointed out that Congress, in passing Title III of the Transportation Act, 1920, was particularly interested in maintaining uninterrupted operation of the carriers, and incidentally desirous of the establishment of reasonable wages and working conditions. Following the suggestion in the law the Board emphasized collective bargaining in the adjustment of labor disputes, and urged that controversies be settled in conference, if possible. Rules were laid down for the guidance of the interested parties in the selection of representatives and in the drawing up of agreements. Decision 119, especially, voiced the thought of the Board concerning the manner of making agreements and the nature of their contents.

Three kinds of wage problems came before the Board. Wage questions on "normal" roads were decided, in the opin-

74. Idem.
75. See Decision 1074, Vol. III, p 486f.

ion of the Board, on a basis of a decent human standard of living, changes in the cost of living, hazards and responsibilities of the employment, and, in some instances, according to the ability of the carrier to pay. The Board claimed that the same principles applied, and were considered in the two other kinds of wage questions which confronted it: those arising on roads in the hands of receivers and those arising out of work under contract.

It was shown, also, that bargaining power probably had its influence with the Board inasmuch as the interested parties were under no legal compulsion to either abide by the decisions of the Board or bring their difficulties before it.[76]

The powers of the Board, from the judicial standpoint, will be examined in the next chapter.

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76. For further consideration of principles see: (after 119): Principle 2: Nos. 467, 1364.
Principle 4. Nos. 2286, 2305.
Principle 5. No. 2305.
Principle 6. Nos. 467, 2305, 2427.
Principle 7. Nos. 1177, 1359, 1362, 1491, 1567, 1722, 1723, 1724, 1761.
Principle 8. Nos. 2148, 2217, 2286.
Principle 11. Nos. 2088, 2089.
Principle 12. Nos. 731, 1364, 1759, 1973, 2037.
Principle 14. No. 2395.
Principle 15. Nos. 618, 998, 1121, 1416, 1424, 1446, 1720, 1786, 1827, 1832, 1860, 1971, 1972, 1982, 1994, 2004, 2212, 2309, 2341, 2390, 2423.
Principle 16. No. 1913.
For wages see also Nos. 2, 5, 147, 215, 228, 1074, 1123, 1621, 1831, 2647, 2752.

CHAPTER III

Powers of The Labor Board as Defined By The Courts

Consideration of the decisions of the United States Railroad Board would not be complete if judicial interpretation of the powers conferred by the Transportation Act were not included. The courts have ruled concerning the jurisdiction of the Board, its power to compel the attendance of witnesses, the enforceability of its decisions. These court rulings will now be examined.

THE BOARD AND THE RIGHTS OF THE INDIVIDUAL

Gregg was displaced from a favored passenger run by Pennybacker on the ground of seniority. He sought a temporary injunction against this displacement but was refused by a lower court. He renewed his motion before the Court of Appeals. In this controversy the management took no part—it being a dispute between two employees. Pennybacker denied the right of the court to intervene on the ground that this was a problem for the United States Railroad Labor Board to handle. The court thought differently:

> We do not believe that Congress either had the power or the intention to provide for the trial of such a controversy by the boards provided under the Transportation Act. There is no provision under which a single individual can apply to such boards for the protection of his contract rights with the company or his fellow-employees; and Gregg, unless he can get 99 of his fellow-employees to join with him, could not take his case before these boards, and would be without a forum unless the State courts were open to him.

The court, therefore, assumed jurisdiction in this dispute.[1]

1. Gregg v. Starks, et al. 224 S. W. 455.

Individual rights were not protected by the Labor Board. This appears from the ruling in this case and from the statement of the law governing the manner in which disputes might come before the Board. It meant that the Board, as legally constituted, was not interested in the standard of living, the hazards, the difficulties of the worker as an individual.

THE BOARD AND THE RIGHT OF EMPLOYEES TO BE MEMBERS OF LABOR ORGANIZATIONS

As pointed out in the discussion of Decision No. 119, which dealt with the making of agreements, the Board held that the workers should not be discriminated against because they belonged or did not belong to a labor union. This attitude the Board held in the case of controversies between management and union, and as between one union and another. The power of the Board to do anything in the matter, other than proclaim its opinion, was reviewed by the Supreme Court of the District of Columbia.[2]

Certain employees were discharged by the defendant railway because of affiliation with the Brotherhood of Railroad Trainmen, and the organization sought an order restraining this act prior to a decision of the Labor Board.[3] The court ruled:

> The right to dismiss its employees for becoming members of a labor union is supported by the judgment of the highest judicial tribunal in the country, which judgment, in cases within the jurisdiction of this court, this court must recognize and enforce.
>
> Application for an injunction was therefore denied.

It follows from this ruling that any decisions of the Labor Board requiring reinstatement of men discharged because of affiliation with a labor union could not be en-

2. Mahoney et al. v. Washington & Old Dominion Railway. Equity No. 38,189.

3. Subsequently the Board disclaimed jurisdiction on the ground that this road did not come within the purview of the Transportation Act. See Decision No. 33, 1920.

forced. Decisions of such nature, made by the Board, would be made in view of the court rulings in this regard, and would be advisory rather than obligatory. As the Board itself pointed out, the parties to disputes of this kind each have a legal right. The carrier has the right to refuse to hire men who belong to labor unions. The employees have a right to refuse to work under these conditions. If both sides to a controversy resolutely stand by their legal rights in the matter a deadlock must inevitably result, with an interruption to the transportation service. And it was such interruption to the operation of the carriers that the Board was designed to prevent. It is clear that this, and other court decisions, placed the Board in a difficult position.

THE BOARD AND THE RIGHTS OF RECEIVERS

In another chapter the attitude of the Labor Board toward roads not in "normal" condition was considered; it now remains to discuss the rulings of the court in controversies involving such roads.

The Missouri and North Arkansas Railroad was in a bad financial condition, and was being operated by a receiver.

> The important question is whether, in view of these facts, which are indisputable, the carrier would be subject to punishment under the provisions of section 312 of the Transportation Act . . . (if it paid wages less than those decreed by the Board). It may be conceded that the act is a constitutional exercise of the powers granted by the Constitution to Congress. But it is not conclusive that a carrier, whose earnings are insufficient to pay the wages established by the Railroad Labor Board, and unable to obtain by loans the money necessary to comply with its order, can be punished for failing to comply with the order. . . .
>
> In the opinion of the court the receiver is authorized and directed to pay the wages in force prior to April 30, 1920.4

4. St. Louis Trust Co. v. Missouri & North Arkansas Railroad Co. District Court of Eastern District of Arkansas, W. D. February 21, 1921.

A case of similar nature, but involving certain additional points of interest, concerned the Atlanta, Birmingham and Atlantic Railway. This carrier had announced a reduction in wages as of a certain date, and the Labor Board had ruled that such an act would be illegal if proper conferences had not been held. The Board had remanded the case to the disputants for further consideration, indicating its inability to assume jurisdiction until proper conferences had been held.

Shortly thereafter, upon the petition of a creditor said to have been inspired by the president of the road, a receivership was granted, the president of the road resigning and being appointed receiver. As receiver he immediately ordered into effect the order reducing wages. In response to this order the employees left the service of the railroad, and asked the court for a rescission of the order on the ground that it was not within the power of the receiver to issue same, as wage regulation was within the province of the Labor Board.

Preservation of the property is the primary object of a receivership, said the court. A railroad may be, and is, affected with a public interest; but it also is endowed with certain constitutional guarantees. "A devotion to public use does not mean devotion to public consumption or destruction." In preserving the property the receiver must either change the conditions or suspend operations. "By no sort of regulation can a railroad be compelled to operate at a continuous loss." The receiver cannot compel patronage or raise rates, practically; to keep the road running but one recourse remains—to reduce expenses. But how can the receiver reduce expenses when many of them are regulated by contract relationships?

It has been long and well settled that a receiver, while he takes the property subject to all existing liens on it, is not bound by the executory contracts of the owner. He may, under the authority of the court, adopt them where it appears to the benefit of his trust to do so, or he may decline to adopt them and leave the original contracting

parties to their legal remedies. And he has a reasonable time to make his election, and the mere continuance of the execution of a contract pending election is not an adoption of it.

Many questions touching terms and conditions of railroad employment ,in view of the superior information and wider experience of the Labor Board on such questions, might be better handled by it than by the court, and no objection is seen to a receiver submitting such to the board, with the approval of the court.

But where, as is the case here, there is no dispute as to conditions of employment, nor as to the just and reasonable wage normally to be paid, but only a question as to the ability of the receiver to pay the wage that has been established, without violating the Constitution, it is not seen how a decision of the Labor Board would be helpful.

Not only are the purse strings of the receivership in the hands of the court, but the interpretation and application of the Constitution is the function of the court as against all boards and commissions, and the court cannot abdicate that function. Its decision upon the question indicated is the only ultimately effectual decision, and to seek that of another tribunal would be barren of practical result.

Questions between a receiver and his employees do not ordinarily involve matters of normal railroad operations of abstract desirability, but are always complicated by the peculiar condition of the business in his hands and are limited to short periods of readjustment. Frequently the expense and delay of seeking an advisory decision from a Labor Board would be disastrous in the exigencies of the receivership.5

Roads in the hands of receivers are not in normal condition and the ordinary rulings of the Labor Board would hardly have been applicable, particularly insofar as they were concerned with abstract desirability. It is the duty of the court, through the receiver, to protect the property. This it must do, labor boards and others to the contrary notwithstanding. The Board had not the right to

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5. Birmingham Trust & Savings Co. v. Atlanta, Birmingham and Atlantic Railway Co. District Court, Northern District of Georgia, March 26, 1921.

decree a wage rate which the roads were unable, while preserving the property, to pay.

THE POWER OF THE BOARD TO PRESCRIBE THE MODUS OPERANDI OF EMPLOYEE REPRESENTATION

Because it was included in the decisions of the court discussed in this connection, the following subject will be considered herein with the above:

THE POWER OF THE BOARD TO PUBLISH ITS FINDINGS

As an arbitrating tribunal the Board had no power to enforce its awards, but had to place its reliance upon public opinion. Although in the definition of the Supreme Court, made in an incidental connection, the Board was an arbitration body, in a practical sense it was a commission endowed with powers of compulsory investigation. If it was not permitted to publish its findings, the efforts it expended in investigation would be largely barren.

In Decision No. 218 the Board prescribed the method for the election of employee representatives on the Pennsylvania System, which prescription was subsequently ignored by the carrier. Thereupon the Board held a hearing the subject matter being, has the Pennsylvania Railroad Company violated the decision of the Board and the provisions of the Transportation Act? As a result of this hearing decision was reached that the railroad was guilty in these particulars, and the Board prepared to publish its findings. The carrier then sought an injunction restraining the Board from publishing its findings

A restraining order was granted by the district court[6] which said:

> The appointment or method of election of confreres under section 301 was not one of the functions delegated to the board, and therefore

6. Penna. RR Co. v. U. S. Railroad Labor Board. 282 F 693.

it had not the right to make the regulations provided for in Decision No. 218.

This decision was appealed from and was reversed by a superior court, with directions to dismiss.[7] In commenting on the preceding decision the court said:

The decree seems to be predicated upon the assumption that the action of the Labor Board in these matters was wholly under the provisions of section 301 of the Transportation Act, and that in the absence of a joint submission of the dispute to the Board it was wholly without jurisdiction. (If this means that) unless both parties agree so to refer it, the Board cannot in any event deal with the matter, Title III might as well not have been enacted; for, if the right of the Board to act depended upon the joint submission of the parties to a dispute it lay in the power of either party to block utterly any action by the Board by simply refusing to join in the submission. Counsel for the appellee do not contend that Title III is to that effect.

It was held by this court that the Board had jurisdiction in the matter, with the right to publish its findings.

Carried to the United States Supreme Court by the Pennsylvania Railroad Company the decision of the appellate court was affirmed and the injunction against the publication of the Board's findings denied.[8] Chief Justice Taft, in writing the decision, agreed with the contention of the lower court that the requirement of a joint submission before the Labor Board could assume jurisdiction would make the Act unworkable. Speaking of the rights of both parties, he added,

But Title III was not enacted to provide a tribunal to determine what were the legal rights and obligations of railway employers and employees or to enforce or protect them. Courts can do that. The Labor Board was created to decide how the parties ought to exercise their legal rights so as to enable them to cooperate in running the

7. U. S. Railroad Labor Board v. Penna. RR Co. 282 F 701.
8. The Penna. RR Co. v. U. S. Railroad Labor Board. February 19, 1923. 261 U. S. 72, 43 Sup. Ct. 278. This position was further elaborated in the Decision of this court, March 2, 1925

railroad. It was to reach a fair compromise between the parties without regard to the legal rights upon which each side might insist in a court of law.

The Board is to act as a board of arbitration. It is to give expression to its views of the moral obligation of each side as members of society to agree upon a basis for cooperation in the work of running the railroad in the public interest. . . . It is not for this or any other court to pass upon the correctness of the Labor Board if it keeps within the jurisdiction that is assigned to it by the statute.

All that we may do in this case is to hold, as we do, that they (Decisions Nos. 119 and 218) were within the lawful function of the Board to render and, not being compulsory, violate no legal or equitable rights of the complaining company.

For this reason we think that the district court was wrong in enjoining the Labor Board from proceeding to entertain further jurisdiction and from publishing its opinions, and the court of appeals was right in reversing the district court and in directing a dismissal of the bill.

It is evident from these decisions of the courts that the Labor Board had the right to prescribe methods for the selection of employee representatives (a right which the carriers were under no legal obligation to recognize, since decisions of the Board did not compel acceptance) and had the right and power to publish its findings.

ENFORCEMENT OF DECISIONS OF THE LABOR BOARD

Enforceability of the Board's decisions was ruled upon in the judicial proceeding just discussed.[9] Chief Justice Taft, who delivered the opinion, said:

It is evident from a review of Title III of the Transportation Act, 1920, that Congress deems it of the highest public interest to prevent the interruption of interstate commerce by labor disputes and strikes and that its plan is to encourage settlement without strikes, first by

9. Idem.

conference between the parties; failing that, by reference to adjustment boards of the parties' own choosing and if this is ineffective, by a full hearing before a national board appointed by the President, upon which are an equal number of representatives of the carrier group, the labor group, and the public. The decisions of the Labor Board are not to be enforced by process. The only sanction of its decision is to be the force of public opinion invoked by the fairness of a full hearing, the intrinsic justice of the conclusion, strengthened by the official prestige of the board, and the full publication of the violation of such decision by any party to the proceedings. . . . The function of the Labor Board is to direct . . . public opinion against the party, who, it thinks, justly deserves it.

Decisions of the Board, according to this ruling, were merely advisory. They might be accepted or ignored by the parties, without fear of penalty, save that which an aroused public opinion might bring, and it was the function of the Board, having made an examination of the facts in dispute, to direct that public criticism "against the party who," in the opinion of the Board, "justly deserves it."

THE BOARD AND THE POWER OF SUBPOENA

Two questions were involved here: the right of the Board to compel a man to appear to give testimony in the district in which he resides, and the privilege of the Board to compel a man to appear in any district and give testimony. The first question is still (June, 1926) judicially undecided; the second has had a ruling which will be outlined in the paragraphs which follow.

D. B. Robertson, a citizen and inhabitant of Cleveland, Ohio, was served in that city, with a subpoena by the United States Marshal, commanding him to appear at the offices of the Labor Board in Chicago to testify on a date named, in a dispute then being inquired into. Robertson's attorney appeared in his absence, challenging the jurisdiction of the Board over Robertson and stating his refusal to appear and testify. Suit was then begun by the Board in

the Federal court for northern Illinois pursuant to the provisions of the Transportation Act:

> In case of failure to comply with any subpoena (to testify) or in case of the contumacy of any witness appearing before the Labor Board, the Board may invoke the aid of any United States district court. Such court may thereupon order the witness to comply with the requirements of such subpoena, or to give evidence touching the matter in question, as the case may be.10

Summons was issued by this court and a final decree was entered directing him "to appear before the Railroad Labor Board, upon due notice by such Board, at a time and place to be designated therein, there to testify, to give evidence, and to give full, true, and complete answer and response to any and all pertinent and relevant questions then and there propounded to him."11

Appeal was made to the Supreme Court and the question asked whether the court had acquired jurisdiction over Robertson. It was the contention of the appellant that when the Transportation Act gave the Board the power to sue out a process in any United States District Court it meant any court of "competent jurisdiction"; and no court is of competent jurisdiction to compel a defendant to obey its decrees except that of the district of which he is an inhabitant or wherein he is found.

The Supreme Court ruled that the Board, under the terms of the Act, could sue in any United States District Court it desired; that this was the meaning of the words "may invoke the aid of any United States District Court." It ruled, further, that the Board was without power to compel the attendance of a person in any than his own district, or the district where he is found. There have been specific exceptions made in this procedure by Congressional legislation, but these have been made in exceptional circumstances which this court decision notes. The Interstate

10. 41 Stat. 456, 472, section 310, paragraph b.
11. 3 Fed. (2d) 488.

Commerce Commission, which in some respects resembles the Labor Board, and which "throughout thirty-eight years has dealt in many different ways with most of the railroads of the United States has never exercised, or asserted, or sought to secure for itself, such broad powers."[12]

Power, then, resided in the Board, to compel attendance of a person in the district in which he lived or was found; but not to compel him to appear outside of his district as, for example, at the office of the Labor Board in Chicago.

SUMMARY OF THE BOARD'S POWERS

In summary it may be said that the courts have ruled that the Board was without power to consider the complaint of a single individual. The dispute had to be brought to the attention of the Board by representatives of employee organizations or on the signed petition of 100 or more unorganized employees.

Concerning labor organizations the court declared that the Board was within its rights in decreeing that employers should not discriminate against employees because of membership or non-membership in such organizations. It added, however, that the parties concerned were under no legal obligations to respect such decrees.

In the case of roads in receivers' hands the ultimate decisions rest with the courts; not upon the principle of wage-fixing, which was within the jurisdiction of the Labor Board, but upon the principle that the property must be protected, and this is a duty which devolves upon the courts.

Elections could be ordered held, and the manner of holding them be prescribed by the Board; but the parties had no legal obligation to carry out the orders of the Board in this connection.

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12. Robertson v. Railroad Labor Board. Supreme Court of United States, June 8, 1925.

Publication of its findings could be made by the Board without fear of injunction.

As was clearly foreshadowed in the preceding decisions, and made definite by the Supreme Court as early as 1923, the Board had the right to make such awards and issue such orders as it deemed just and reasonable; but its powers were merely advisory, and there was no legal process whereby it might enforce its decisions.

The Board might subpoena witnesses to appear before it in their own district; but it was without power to compel them to appear before it in Chicago, if that was not the district which the witnesses in question inhabit.

In the strictly legal sense, the Board was not an arbitration tribunal at all; but an investigating body, endowed with considerable powers.

CHAPTER IV.

New Legislation

There should be some machinery for the adjustment of railway labor disputes because of the public nature of the industry and the large amount of labor and capital involved. Uninterrupted service must be secured. Measures which temporarily avert trouble are good; those which make permanent contributions while temporarily averting trouble are better.

REVIEW OF MACHINERY FOR THE ADJUSTMENT OF RAILWAY LABOR DISPUTES

Because of its minor practical significance it is not necessary to review the Act of 1888 except to say that it embodied compulsory investigation features which, it has been claimed, made the Act objectionable to the employers and made them fear to use it. If public opinion is to function it is necessary that the public have possession of the facts, and the compulsory investigation provisions of this law were intended to enable the public to learn the facts.

Power of investigation was not provided by the Erdman Act of 1898 nor the Newlands Act of 1913. A provision for it was contained in the Transportation Act, 1920. In fact the principal function of the Labor Board created under the 1920 Act appeared to be the investigating of disputes.

Mediation was emphasized in the Erdman and Newlands Act and was comparatively successful in securing uninterrupted operation of the carriers. But, just prior to the war period, it broke down on several occasions And, while it averted strikes, the testimony of Commissioner Neill is to the effect that the country was upon the verge of strikes

numerous times, and they were only prevented by capitulation on the part of the management.

Neither the Erdman nor Newlands Acts provided for a permanent body of arbitration. This lack was remedied by the establishment of the Railroad Labor Board which was presumed to be, and was so defined by the Supreme Court, an arbitration body. It had no mediatory powers unless one regards the remanding of a dispute to the interested parties, with certain suggestions, and instructions to confer farther, as mediation.

It was thought that the establishment of a Railroad Labor Board as a permanent tribunal, composed of representatives of both sides and the public, would provide a satisfactory method of adjusting labor disputes. The way in which the Board was constituted was supposed to provide both technical knowledge and public interest. Being permanent, it was expected that the Board would build up a body of principles and that its decisions would be of something more than a temporary nature.

Unfortunately, despite its protestations to the contrary, it does not appear that during the jurisdiction of the Labor Board a decent living wage was established for the great majority of railroad workers. It is true that the primary function of the Board was, not to establish just and reasonable wages per se, but as incidental to maintaining the operation of the carriers. The shopmen's strike was the only one of any magnitude which occurred since the inception of the Board, but on several occasions strikes have been threatened just as under the Newlands Act.

In any case the time had come when certain railroads aggregating considerable mileage, and certain employee organizations, representing considerable bargaining power, no longer heeded, nor consulted, the Labor Board. The Labor Board had power to intervene in any dispute and render decision, but, as the decision could be ignored, the procedure was not fruitful of helpful results.

To discover how this feeling of antagonism and dis-

trust arose is a field of investigation in itself. Suffice it to say that when the labor organizations attempted to secure the passage of the Howell-Barkley Bill they submitted a number of criticisms of the Board. They stated that the Board had failed to adequately, properly, and honestly make use of the direction of the law that, among other relevant circumstances, the Board should consider the relation between wages and the cost of living in reaching its decisions. They claimed that the Board had allowed the conference principle to become a farce, since it had no real power to establish a genuine conference and was under obligation to assume jurisdiction even though the proper conferences were not held. They said that the Board was unable to enforce its decisions except through publicity which, they claimed, placed labor at a disadvantage. Managements could disobey the decisions of the Board and, short of a strike, could keep on running. Therefore public attention was not attracted to the controversy. The only way labor could disobey a wage or rule order of the Board was to quit work; and a strike is a fairly certain method of attracting public attention.

They alleged that the Board's membership had been sometimes unqualified, some of the members not being conversant with the points at issue. They said that in some instances the appointments were not strictly legal; that at least one member of the Board secured his position through rather questionable methods, and that another, representing labor, was put on the Board after he had been "fired" by his own organization.

Public members of the Board had secured their appointment, so it was said, because of certain services rendered to their party. These members had not always been discreet; having a tendency to deliver addresses on various occasions, sometimes leveling sharp criticisms toward the interested groups who were expected to come before the national tribunial for the adjudication of disputes.

A point of strength in the old mediatory system was the

feeling of confidence and good will which the mediators inspired. It was difficult for the Board to inspire this feeling for, while actually it was an investigating body with compulsory powers, nominally it was a board of arbitration delivering decisions; and the necessity of enforcing these through public opinion laid upon the Board the burden of unpleasant, and perhaps, unprofitable criticism.[1]

The Howell-Barkley Bill was not passed by Congress, partly because of the pressure of other matters, and partly because of certain features of the bill which were considered objectionable. The Bill provided for conferences between the self-chosen representatives of workers and managements. There were to be equi-partizan boards of adjustment to deal with the technical problems of operation. This feature of the bill was considered objectionable as the expense of these boards was to be borne by the Government and the cost entailed by their establishment would have been considerably more than the expense connected with the operation of the Labor Board. When mediation was necessary it would be sought at the hands of impartial government officials and there would be voluntary arbitration of major controversies.[2] The watchful eye of the public was, thereby, to be kept away from the conference table, there was to be no compulsory investigating body, nor permanent board of arbitration. This bill had the support of what is known as "the recognized labor organizations" but some of the railroad managements were hostile.

A bill known as the Watson-Parker Bill or the Railway Labor Act was introduced in the Senate by Senator Watson January 7, 1926 (S. 2306) and in the House of Representatives by Representative Parker February 19, 1926 (H. R. 9463). It abolished the Railroad Labor Board and repealed Title III of the Transportation Act, 1920, and the Newlands Act of July 15, 1913; the latter had not been

1. Hearing on S. 2646, 1924.
2. Idem.

repealed by Title III and there had been some confusion regarding its status. This bill became law, June, 1926.

This bill had its origin in conference between the labor organizations and the railroad managements.[3] It had the support of the railroads and these organizations, twenty of them).

It was submitted to a meeting of the Association of Railway Executives, at which 52 roads with 199 votes, representing 167,915.69 miles, favored it; and 20 roads with 48 votes, representing 36,564.67 miles, opposed it. This was out of a total membership of 107 roads with 288 votes, representing 222,842.84 miles. Of these, 32 roads with 38 votes, representing 18,134.45 miles, were absent; and 3 roads with 3 votes, representing 228.03 miles, did not vote.[4]

In messages to Congress, December 6, 1923, and December 3, 1924, the President had suggested such conferences as were referred to above and had said, "It, (the Labor Board) has been a great help, but is not altogether satisfactory to the public, the employees, or the companies. If a substantial agreement can be reached among the groups interested, there should be no hesitancy in enacting such agreement into law."[5]

This attitude was shared by the Republican platform of 1924 which said that the labor legislation should be changed as conditions warranted. New legislation should protect the public interest by providing for a public, i. e. impartial tribunal for use in emergencies to investigate facts and publish its findings. The platform added: "We do not believe in compulsory action at any time in the settlement of disputes."[6]

Outspoken in its convictions was the Democratic Platform of the same year. "The labor provisions of the act (transportation act, 1920) have proven unsatisfactory in

3. Senate Report No. 228, February 26, 1926. p 2.
4. Idem.
5. Idem, p 3.
6. Idem.

settling disputes between employer and employee. . . . . It must therefore be so rewritten so that the high purposes which the public welfare demands may be accomplished."[7]

The Senate Committee which conducted the hearings on the Bill was convinced that the time was ripe for a change in the railroad labor law.[8]

In view of the fact that the employees absolutely refuse to appear before the labor board and that many of the important railroads are themselves opposed to it, that it has been held by the Supreme Court to have no power to enforce its judgments, that its authority is not recognized nor respected by the employees and by a number of important railroads, that the President has suggested that it would be wise to seek a substitute for it, and that the party platforms of both the Republican and Democratic parties in 1924 clearly indicated dissatisfaction with the provisions of the transportation act relating to labor, the committee concluded that the time had arrived when the labor board should be abolished and the provisions relating to labor in the transportation act should be repealed.

PROVISIONS OF THE RAILWAY LABOR ACT

Section 1 deals with definitions of terms.

Section 2 considers **General Duties,** and, like Title III of the Transportation Act, makes it the duty of railroad managers and employees to make every reasonable effort to make and maintain agreements. All disputes are to be considered first in conference of the interested parties. Representatives "shall be designated by the respective parties" in their own way, and without influence, interference, or coercion by the other party. This would seem to bear out some of the principles enunciated by the Labor Board in Decision No. 218. Disputes are divided into three classes: 1. Disputes over agreement interpretations or applications, or over grievances. 2. Disputes over proposed changes in agreements concerning rates of pay, rules or working conditions. 3. All other disputes.

7. Idem.
8. Idem, pp 3-4.

All disputes are to be considered in conference. If not settled there class (1) disputes go to an adjustment board, then, if necessary, to the board of mediation. Class (2) and (3) disputes, if not settled in conference, go directly to the Government board of mediation. (Sections 3 and 5).

Adjustment boards (section 3) must be created by agreement between management and employees, or the parties may establish such machinery of contract and adjustment as they prefer. If disputes are not settled by these methods, there is provided:

A **Board of Mediation** consisting of five members appointed by the President by and with the advice and consent of the Senate. It is the duty of this board to intervene at the request of either party, or on its own motion in any class of dispute as enumerated above. If this board is unable to bring about a settlement "it shall endeavor to induce the parties to submit to arbitration." (Sections 4 and 5). This seems like the Newlands Act all over again.

Boards of Arbitration are provided for **when the parties consent to arbitrate.** When such consent to arbitrate is secured there must be a written agreement to arbitrate, this agreement shall contain a description of the subject matter of dispute, date of hearing, purpose to abide by award, and so forth, largely after the manner of the provisions of the Erdman and Newlands Act. (Sections 7 and 8). These boards shall consist of 3 or 6 persons, according as the interested parties designate. The manner of their selection is as prescribed in the Erdman and Newlands Acts. As stipulated in those acts awards are to be filed, appealed from if desired, or go into effect.

An EMERGENCY BOARD shall be created by the President when the Board of Mediation notifies him that disputes have not been settled, as above provided, and are likely substantially to interrupt commerce. This Board shall be composed of impartial persons, as many as the President shall deem desirable; its duty being to investigate the controversy and report to the President within 30

days from the date of its creation. "After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose." (Section 10).

Expenses of the Emergency Board are to be paid by the Government and the members of the Board of Mediation are to be salaried at $12,000 each. The expenses of the adjustment boards are to be met by the interested parties. (The Howell-Barkley bill would have placed this burdn upon the Government).

Disputes under this law will be handled, then, 1st, in conference between the interested parties; 2nd, by bipartizan boards of adjustment or such other machinery as the parties by agreement may mutually establish: 3rd, the services of the Board of Mediation may be sought or accepted; 4th, the dispute may be submitted to an arbitration board at the discretion of the parties; 6th, the President may, on the recommendation of the Board of Mediation, appoint an Emergency Board to investigate the controversy and publish its findings.

This legislation, like Title III of the Transportation Act, says "must" where it has no power to compel. The parties, in fact, MAY confer, use the good offices of the Government as a mediator, submit the dispute to arbitration, reveal facts to the emergency board; they may do this if they so desire. There is no compulsion. If, as alleged by the proponents of this bill, the Labor Board broke down partly because of its lack of power, what guarantee is there for success of this legislation? There is the element of moral obligation of its sponsors, and it is for the future to reveal the effectiveness of this element in securing the successful working of this law.

It will be noted that neither the board of mediation nor the emergency board has power to compel the attendance of witnsses or the giving of testimony. It has been said the interested parties will gladly give all the facts[9], and that "it

is not expected that the board will go into a long drawn out inquiry into details, for that, besides being unnecessary to intelligently inform public opinion on the larger and controlling features of the controversy, would preclude a very desirable class of men from accepting appointment to such an exacting and prolonged duty."[10] The arbitration boards do have power to subpoena, but these boards are to be formed only upon the written consent of the disputants. None of the features of this Act provides for the enlightening of public opinion in the manner of the Labor Board.

In favor of the new legislation it may be said that similar provisions worked with some degree of success during the period of the Erdman and Newlands Acts. The law was sponsored by the interested parties and there is a moral obligation to give this legislation a chance. The law is sufficiently liberal, in that it gives the interested parties the privilege of setting up either adjustment boards for the settlement of disputes, or such other machinery as they prefer. As provided (in section 6), disputes involving changes in rates of pay, working conditions, and so forth, are to be considered in the order received, and class by class in contradistinction to the method of the Labor Board of lumping any number of dockets together.

Wages under this new law can be settled by individual roads, regions, systems, or nation wide as the parties prefer. This marks an advance over the Labor Board method of ruling for practically the whole country at once in certain basic decisions.

After the history of the Act of 1888 one hesitates to prophesy concerning the usefulness of the emergency board as provided in the new legislation. Regarding the other features of the Railway Labor Act we have the history of the Erdman and Newlands Acts; i. e. with the exception of the adjustment boards the use of which is not compulsory under the law.

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9. Report No. 228, p 5.
10. Idem, p 5.

A permanent board of arbitration or of investigation would appear to have advantages in securing a grasp of the railroad labor problem; but the history of the Labor Board indicates that when such a Board fulfills its duty as an investigating body it loses its prestige and power to command respect as an arbitration board. As an arbitration board, with power to make awards and render decisions, it must, apparently, forego the ability to act as an impartial and friendly mediator. In a serious dispute its rendition of an award takes it out of the ranks of the impartial and makes it a partizan on the side of that party favored by the decision; this makes it difficult for such a board to be of service in further controversy. And, it was chiefly for this reason that the Board broke down as an agency for the voluntary adjustment of labor disputes.

If the opinion of the Senate Committee reporting S. 2306 is correct, "it is in the public interest to permit a fair trial of the method of amicable adjustment agreed upon by the parties, rather than to attempt under existing conditions to use the entire power of the Government to deal with these labor disputes."[11]

Should this plan not work, it will then be time to consider futher legislation to provide for adequate and uninterrupted transportation.

11. Senate Report No. 228, p 4.

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